

# House Daily Reader

# Monday, February 27, 2012

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# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

625T0096

SENATE ENGROSSED NO. **HB 1059** - 2/23/2012

Introduced by: Representatives Lust, Feinstein, and Gosch and Senators Nygaard and Cutler

1 FOR AN ACT ENTITLED, An Act to revise Article 9 of the Uniform Commercial Code, to  
2 make an appropriation, and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 57A-9-102 be amended to read as follows:

5 57A-9-102. (a) In this chapter:

6 (1) "Accession" means goods that are physically united with other goods in such a  
7 manner that the identity of the original goods is not lost.

8 (2) "Account," except as used in "account for," means a right to payment of a monetary  
9 obligation, whether or not earned by performance, (i) for property that has been or  
10 is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services  
11 rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv)  
12 for a secondary obligation incurred or to be incurred, (v) for energy provided or to be  
13 provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii)  
14 arising out of the use of a credit or charge card or information contained on or for use  
15 with the card, or (viii) as winnings in a lottery or other game of chance operated or



sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a

1 debtor in connection with a debtor's farming operation; or

2 (ii) Leased real property to a debtor in connection with the debtor's farming  
3 operation; and

4 (C) Whose effectiveness does not depend on the person's possession of the  
5 personal property.

6 (6) "As-extracted collateral" means:

7 (A) Oil, gas, or other minerals that are subject to a security interest that:

8 (i) Is created by a debtor having an interest in the minerals before  
9 extraction; and

10 (ii) Attaches to the minerals as extracted; or

11 (B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or  
12 other minerals in which the debtor had an interest before extraction.

13 (7) "Authenticate" means:

14 (A) To sign; or

15 (B) ~~To execute or otherwise adopt a symbol, or encrypt or similarly process a~~  
16 ~~record in whole or in part, with the present intent of the authenticating person~~  
17 ~~to identify the person and adopt or accept a record~~ With present intent to adopt  
18 or accept a record, to attach to or logically associate with the record an  
19 electronic sound, symbol, or process.

20 (8) "Bank" means an organization that is engaged in the business of banking. The term  
21 includes savings banks, savings and loan associations, credit unions, and trust  
22 companies.

23 (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the  
24 like.

1 (10) "Certificate of title" means a certificate of title with respect to which a statute  
2 provides for the security interest in question to be indicated on the certificate as a  
3 condition or result of the security interest's obtaining priority over the rights of a lien  
4 creditor with respect to the collateral. The term includes another record maintained  
5 as an alternative to a certificate of title by the governmental unit that issues  
6 certificates of title if a statute permits the security interest in question to be indicated  
7 on the record as a condition or result of the security interest's obtaining priority over  
8 the rights of a lien creditor with respect to the collateral.

9 (11) "Chattel paper" means a record or records that evidence both a monetary obligation  
10 and a security interest in specific goods, a security interest in specific goods and  
11 software used in the goods, a security interest in specific goods and license of  
12 software used in the goods, a lease of specific goods, or a lease of specific goods and  
13 license of software used in the goods. In this paragraph, "monetary obligation" means  
14 a monetary obligation secured by the goods or owed under a lease of the goods and  
15 includes a monetary obligation with respect to software used in the goods. The term  
16 does not include (i) charters or other contracts involving the use or hire of a vessel  
17 or (ii) records that evidence a right to payment arising out of the use of a credit or  
18 charge card or information contained on or for use with the card. If a transaction is  
19 evidenced by records that include an instrument or series of instruments, the group  
20 of records taken together constitutes chattel paper.

21 (12) "Collateral" means the property subject to a security interest or agricultural lien. The  
22 term includes:

23 (A) Proceeds to which a security interest attaches;

24 (B) Accounts, chattel paper, payment intangibles, and promissory notes that have

1                   been sold; and

2                   (C)    Goods that are the subject of a consignment.

3       (13)   "Commercial tort claim" means a claim arising in tort with respect to which:

4                   (A)    The claimant is an organization; or

5                   (B)    The claimant is an individual and the claim:

6                         (i)    Arose in the course of the claimant's business or profession; and

7                         (ii)   Does not include damages arising out of personal injury to or the death  
8                                 of an individual.

9       (14)   "Commodity account" means an account maintained by a commodity intermediary  
10               in which a commodity contract is carried for a commodity customer.

11       (15)   "Commodity contract" means a commodity futures contract, an option on a  
12               commodity futures contract, a commodity option, or another contract if the contract  
13               or option is:

14                   (A)    Traded on or subject to the rules of a board of trade that has been designated  
15                         as a contract market for such a contract pursuant to federal commodities laws;  
16                         or

17                   (B)    Traded on a foreign commodity board of trade, exchange, or market, and is  
18                         carried on the books of a commodity intermediary for a commodity customer.

19       (16)   "Commodity customer" means a person for which a commodity intermediary carries  
20               a commodity contract on its books.

21       (17)   "Commodity intermediary" means a person that:

22                   (A)    Is registered as a futures commission merchant under federal commodities  
23                         law; or

24                   (B)    In the ordinary course of its business provides clearance or settlement services

1                   for a board of trade that has been designated as a contract market pursuant to  
2                   federal commodities law.

3       (18) "Communicate" means:

4               (A) To send a written or other tangible record;

5               (B) To transmit a record by any means agreed upon by the persons sending and  
6               receiving the record; or

7               (C) In the case of transmission of a record to or by a filing office, to transmit a  
8               record by any means prescribed by filing-office rule.

9       (19) "Consignee" means a merchant to which goods are delivered in a consignment.

10      (20) "Consignment" means a transaction, regardless of its form, in which a person delivers  
11      goods to a merchant for the purpose of sale and:

12              (A) The merchant:

13                  (i) Deals in goods of that kind under a name other than the name of the  
14                  person making delivery;

15                  (ii) Is not an auctioneer; and

16                  (iii) Is not generally known by its creditors to be substantially engaged in  
17                  selling the goods of others;

18              (B) With respect to each delivery, the aggregate value of the goods is \$1,000 or  
19              more at the time of delivery;

20              (C) The goods are not consumer goods immediately before delivery; and

21              (D) The transaction does not create a security interest that secures an obligation.

22      (21) "Consignor" means a person that delivers goods to a consignee in a consignment.

23      (22) "Consumer debtor" means a debtor in a consumer transaction.

24      (23) "Consumer goods" means goods that are used or bought for use primarily for

1 personal, family, or household purposes.

2 (24) "Consumer-goods transaction" means a consumer transaction in which:

3 (A) An individual incurs an obligation primarily for personal, family, or household  
4 purposes; and

5 (B) A security interest in consumer goods secures the obligation.

6 (25) "Consumer obligor" means an obligor who is an individual and who incurred the  
7 obligation as part of a transaction entered into primarily for personal, family, or  
8 household purposes.

9 (26) "Consumer transaction" means a transaction in which (i) an individual incurs an  
10 obligation primarily for personal, family, or household purposes, (ii) a security  
11 interest secures the obligation, and (iii) the collateral is held or acquired primarily for  
12 personal, family, or household purposes. The term includes consumer-goods  
13 transactions.

14 (27) "Continuation statement" means an amendment of a financing statement which:

15 (A) Identifies, by its file number, the initial financing statement to which it relates;  
16 and

17 (B) Indicates that it is a continuation statement for, or that it is filed to continue  
18 the effectiveness of, the identified financing statement.

19 (28) "Debtor" means:

20 (A) A person having an interest, other than a security interest or other lien, in the  
21 collateral, whether or not the person is an obligor;

22 (B) A seller of accounts, chattel paper, payment intangibles, or promissory notes;  
23 or

24 (C) A consignee.



- 1 (29) "Deposit account" means a demand, time, savings, passbook, or similar account  
2 maintained with a bank. The term does not include investment property or accounts  
3 evidenced by an instrument.
- 4 (30) "Document" means a document of title or a receipt of the type described in § 57A-7-  
5 201(b).
- 6 (31) "Electronic chattel paper" means chattel paper evidenced by a record or records  
7 consisting of information stored in an electronic medium.
- 8 (32) "Encumbrance" means a right, other than an ownership interest, in real property. The  
9 term includes mortgages and other liens on real property.
- 10 (33) "Equipment" means goods other than inventory, farm products, or consumer goods.
- 11 (34) "Farm products" means goods, other than standing timber, with respect to which the  
12 debtor is engaged in a farming operation and which are:
- 13 (A) Crops grown, growing, or to be grown, including:
- 14 (i) Crops produced on trees, vines, and bushes; and
- 15 (ii) Aquatic goods produced in aquacultural operations;
- 16 (B) Livestock, born or unborn, including aquatic goods produced in aquacultural  
17 operations;
- 18 (C) Supplies used or produced in a farming operation; or
- 19 (D) Products of crops or livestock in their unmanufactured states.
- 20 (35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or  
21 any other farming, livestock, or aquacultural operation.
- 22 (36) "File number" means the number assigned to an initial financing statement pursuant  
23 to § 57A-9-519(a).
- 24 (37) "Filing office" means an office designated in § 57A-9-501 as the place to file a

1 financing statement.

2 (38) "Filing-office rule" means a rule adopted pursuant to § 57A-9-526.

3 (39) "Financing statement" means a record or records composed of an initial financing  
4 statement and any filed record relating to the initial financing statement.

5 (40) "Fixture filing" means the filing of a financing statement covering goods that are or  
6 are to become fixtures and satisfying § 57A-9-502(a) and (b). The term includes the  
7 filing of a financing statement covering goods of a transmitting utility which are or  
8 are to become fixtures.

9 (41) "Fixtures" means goods that have become so related to particular real property that  
10 an interest in them arises under real property law.

11 (42) "General intangible" means any personal property, including things in action, other  
12 than accounts, chattel paper, commercial tort claims, deposit accounts, documents,  
13 goods, instruments, investment property, letter-of-credit rights, letters of credit,  
14 money, and oil, gas, or other minerals before extraction. The term includes payment  
15 intangibles and software.

16 (43) ~~(Reserved.)~~ "Good faith" means honesty in fact and the observance of reasonable  
17 commercial standards of fair dealing.

18 (44) "Goods" means all things that are movable when a security interest attaches. The  
19 term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a  
20 conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown,  
21 growing, or to be grown, even if the crops are produced on trees, vines, or bushes,  
22 and (v) manufactured homes. The term also includes a computer program embedded  
23 in goods and any supporting information provided in connection with a transaction  
24 relating to the program if (i) the program is associated with the goods in such a

manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

1 (B) Are held by a person for sale or lease or to be furnished under a contract of  
2 service;

3 (C) Are furnished by a person under a contract of service; or

4 (D) Consist of raw materials, work in process, or materials used or consumed in  
5 a business.

6 (49) "Investment property" means a security, whether certificated or uncertificated,  
7 security entitlement, securities account, commodity contract, or commodity account.

8 (50) "Jurisdiction of organization" with respect to a registered organization, means the  
9 jurisdiction under whose law the organization is formed or organized.

10 (51) "Letter-of-credit right" means a right to payment or performance under a letter of  
11 credit, whether or not the beneficiary has demanded or is at the time entitled to  
12 demand payment or performance. The term does not include the right of a beneficiary  
13 to demand payment or performance under a letter of credit.

14 (52) "Lien creditor" means:

15 (A) A creditor that has acquired a lien on the property involved by attachment,  
16 levy, or the like;

17 (B) An assignee for benefit of creditors from the time of assignment;

18 (C) A trustee in bankruptcy from the date of the filing of the petition; or

19 (D) A receiver in equity from the time of appointment.

20 (53) "Manufactured home" means a structure, transportable in one or more sections,  
21 which, in the traveling mode, is eight body feet or more in width or 40 body feet or  
22 more in length, or, when erected on site, is 320 or more square feet, and which is  
23 built on a permanent chassis and designed to be used as a dwelling with or without  
24 a permanent foundation when connected to the required utilities, and includes the

1 plumbing, heating, air-conditioning, and electrical systems contained therein. The  
2 term includes any structure that meets all of the requirements of this paragraph except  
3 the size requirements and with respect to which the manufacturer voluntarily files a  
4 certification required by the United States Secretary of Housing and Urban  
5 Development and complies with the standards established under Title 42 of the  
6 United States Code.

7 (54) "Manufactured-home transaction" means a secured transaction:

8 (A) That creates a purchase-money security interest in a manufactured home, other  
9 than a manufactured home held as inventory; or

10 (B) In which a manufactured home, other than a manufactured home held as  
11 inventory, is the primary collateral.

12 (55) "Mortgage" means a consensual interest in real property, including fixtures, which  
13 secures payment or performance of an obligation.

14 (56) "New debtor" means a person that becomes bound as debtor under § 57A-9-203(d)  
15 by a security agreement previously entered into by another person.

16 (57) "New value" means (i) money, (ii) money's worth in property, services, or new credit,  
17 or (iii) release by a transferee of an interest in property previously transferred to the  
18 transferee. The term does not include an obligation substituted for another obligation.

19 (58) "Noncash proceeds" means proceeds other than cash proceeds.

20 (59) "Obligor" means a person that, with respect to an obligation secured by a security  
21 interest in or an agricultural lien on the collateral, (i) owes payment or other  
22 performance of the obligation, (ii) has provided property other than the collateral to  
23 secure payment or other performance of the obligation, or (iii) is otherwise  
24 accountable in whole or in part for payment or other performance of the obligation.

1           The term does not include issuers or nominated persons under a letter of credit.

2       (60) "Original debtor," except as used in § 57A-9-310(c), means a person that, as debtor,  
3           entered into a security agreement to which a new debtor has become bound under  
4           § 57A-9-203(d).

5       (61) "Payment intangible" means a general intangible under which the account debtor's  
6           principal obligation is a monetary obligation.

7       (62) "Person related to," with respect to an individual, means:

8           (A)   The spouse of the individual;

9           (B)   A brother, brother-in-law, sister, or sister-in-law of the individual;

10          (C)   An ancestor or lineal descendant of the individual or the individual's spouse;  
11               or

12          (D)   Any other relative, by blood or marriage, of the individual or the individual's  
13               spouse who shares the same home with the individual.

14       (63) "Person related to," with respect to an organization, means:

15          (A)   A person directly or indirectly controlling, controlled by, or under common  
16               control with the organization;

17          (B)   An officer or director of, or a person performing similar functions with respect  
18               to, the organization;

19          (C)   An officer or director of, or a person performing similar functions with respect  
20               to, a person described in subparagraph (A);

21          (D)   The spouse of an individual described in subparagraph (A), (B), or (C); or

22          (E)   An individual who is related by blood or marriage to an individual described  
23               in subparagraph (A), (B), (C), or (D) and shares the same home with the  
24               individual.

1       (64) "Proceeds," except as used in § 57A-9-609(b), means the following property:

2           (A) Whatever is acquired upon the sale, lease, license, exchange, or other  
3           disposition of collateral;

4           (B) Whatever is collected on, or distributed on account of, collateral;

5           (C) Rights arising out of collateral;

6           (D) To the extent of the value of collateral, claims arising out of the loss,  
7           nonconformity, or interference with the use of, defects or infringement of  
8           rights in, or damage to, the collateral; or

9           (E) To the extent of the value of collateral and to the extent payable to the debtor  
10          or the secured party, insurance payable by reason of the loss or nonconformity  
11          of, defects or infringement of rights in, or damage to, the collateral.

12       (65) "Promissory note" means an instrument that evidences a promise to pay a monetary  
13          obligation, does not evidence an order to pay, and does not contain an  
14          acknowledgment by a bank that the bank has received for deposit a sum of money or  
15          funds.

16       (66) "Proposal" means a record authenticated by a secured party which includes the terms  
17          on which the secured party is willing to accept collateral in full or partial satisfaction  
18          of the obligation it secures pursuant to §§ 57A-9-620, 57A-9-621, and 57A-9-622.

19       (67) "Public-finance transaction" means a secured transaction in connection with which:

20           (A) Debt or other securities are issued; and

21           (B) The debtor, obligor, secured party, account debtor or other person obligated  
22           on collateral, assignor or assignee of a secured obligation, or assignor or  
23           assignee of a security interest is a state or a governmental unit of a state.

24       (68) "Public organic record" means a record that is available to the public for inspection

1           and is:

2           (A) A record consisting of the record initially filed with or issued by a state or the  
3               United States to form or organize an organization and any record filed with or  
4               issued by the state or the United States which amends or restates the original  
5               record;

6           (B) An organic record of a business trust consisting of the record initially filed  
7               with a state and any record filed with the state which amends or restates the  
8               initial record, if a statute of the state governing business trusts requires that the  
9               record be filed with the state; or

10          (C) A record consisting of legislation enacted by the Legislature of a state or the  
11               Congress of the United States which forms or organizes an organization, any  
12               record amending the legislation, and any record filed with or issued by the  
13               state or the United States which amends or restates the name of the  
14               organization.

15       (69) "Pursuant to commitment," with respect to an advance made or other value given by  
16           a secured party, means pursuant to the secured party's obligation, whether or not a  
17           subsequent event of default or other event not within the secured party's control has  
18           relieved or may relieve the secured party from its obligation.

19       ~~(69)~~(70) "Record," except as used in "for record," "of record," "record or legal title,"  
20           and "record owner," means information that is inscribed on a tangible medium  
21           or which is stored in an electronic or other medium and is retrievable in  
22           perceivable form.

23       ~~(70)~~(71) "Registered organization" means an organization organized solely under the  
24           law of a single state or the United States ~~and as to which the state or the~~



1 ~~United States must maintain a public record showing the organization to have~~  
2 ~~been organized by the filing of a public organic record with, the issuance of~~  
3 ~~a public organic record by, or the enactment of legislation by the state or the~~  
4 ~~United States. The term includes a business trust that is formed or organized~~  
5 ~~under the law of a single state if a statute of the state governing business trusts~~  
6 ~~requires that the business trust's organic record be filed with the state.~~

7 ~~(71)~~(72) "Secondary obligor" means an obligor to the extent that:

8 (A) The obligor's obligation is secondary; or

9 (B) The obligor has a right of recourse with respect to an obligation secured by  
10 collateral against the debtor, another obligor, or property of either.

11 ~~(72)~~(73) "Secured party" means:

12 (A) A person in whose favor a security interest is created or provided for under a  
13 security agreement, whether or not any obligation to be secured is outstanding;

14 (B) A person that holds an agricultural lien;

15 (C) A consignor;

16 (D) A person to which accounts, chattel paper, payment intangibles, or promissory  
17 notes have been sold;

18 (E) A trustee, indenture trustee, agent, collateral agent, or other representative in  
19 whose favor a security interest or agricultural lien is created or provided for;  
20 or

21 (F) A person that holds a security interest arising under §§ 57A-2-401, 57A-2-505,  
22 57A-2-711(3), 57A-2A-508(5), 57A-4-210, or 57A-5-118.

23 ~~(73)~~(74) "Security agreement" means an agreement that creates or provides for a  
24 security interest.

1       ~~(74)~~(75)       "Send," in connection with a record or notification, means:

2               (A)    To deposit in the mail, deliver for transmission, or transmit by any other usual  
3                       means of communication, with postage or cost of transmission provided for,  
4                       addressed to any address reasonable under the circumstances; or

5               (B)    To cause the record or notification to be received within the time that it would  
6                       have been received if properly sent under subparagraph (A).

7       ~~(75)~~(76)       "Software" means a computer program and any supporting information  
8                       provided in connection with a transaction relating to the program. The term  
9                       does not include a computer program that is included in the definition of  
10                      goods.

11       ~~(76)~~(77)       "State" means a state of the United States, the District of Columbia, Puerto  
12                      Rico, the United States Virgin Islands, or any territory or insular possession  
13                      subject to the jurisdiction of the United States.

14       ~~(77)~~(78)       "Supporting obligation" means a letter-of-credit right or secondary obligation  
15                      that supports the payment or performance of an account, chattel paper, a  
16                      document, a general intangible, an instrument, or investment property.

17       ~~(78)~~(79)       "Tangible chattel paper" means chattel paper evidenced by a record or records  
18                      consisting of information that is inscribed on a tangible medium.

19       ~~(79)~~(80)       "Termination statement" means an amendment of a financing statement which:

20               (A)    Identifies, by its file number, the initial financing statement to which it relates;  
21                      and

22               (B)    Indicates either that it is a termination statement or that the identified  
23                      financing statement is no longer effective.

24       ~~(80)~~(81)       "Transmitting utility" means a person primarily engaged in the business of:

- 1 (A) Operating a railroad, subway, street railway, or trolley bus;
- 2 (B) Transmitting communications electrically, electromagnetically, or by light;
- 3 (C) Transmitting goods by pipeline or sewer; or
- 4 (D) Transmitting or producing and transmitting electricity, steam, gas, or water.

5 (b) The following definitions in other sections apply to this chapter:

6 "Applicant." § 57A-5-102.

7 "Broker." § 57A-8-102.

8 "Certificated security." § 57A-8-102.

9 "Check." § 57A-3-104.

10 "Clearing corporation." § 57A-8-102.

11 "Contract for sale." § 57A-2-106.

12 "Control" (with respect to a document of title) § 57A-7-106.

13 "Customer." § 57A-4-104.

14 "Entitlement holder." § 57A-8-102.

15 "Financial asset." § 57A-8-102.

16 "Holder in due course." § 57A-3-302.

17 "Issuer" (with respect to a letter of credit or letter-of-credit right). § 57A-5-102.

18 "Issuer" (with respect to a security). § 57A-8-201.

19 "Lease." § 57A-2A-103.

20 "Lease agreement." § 57A-2A-103.

21 "Lease contract." § 57A-2A-103.

22 "Leasehold interest." § 57A-2A-103.

23 "Lessee." § 57A-2A-103.

24 "Lessee in ordinary course of business." § 57A-2A-103.

1 "Lessor." § 57A-2A-103.

2 "Lessor's residual interest." § 57A-2A-103.

3 "Letter of credit." § 57A-5-102.

4 "Merchant." § 57A-2-104.

5 "Negotiable instrument." § 57A-3-104.

6 "Nominated person." § 57A-5-102.

7 "Note." § 57A-3-104.

8 "Proceeds of a letter of credit." § 57A-5-114.

9 "Prove." § 57A-3-103.

10 "Sale." § 57A-2-106.

11 "Securities account." § 57A-8-501.

12 "Securities intermediary." § 57A-8-102.

13 "Security." § 57A-8-102.

14 "Security certificate." § 57A-8-102.

15 "Security entitlement." § 57A-8-102.

16 "Uncertificated security." § 57A-8-102.

17 (c) SDCL chapter 57A-1 contains general definitions and principles of construction and  
18 interpretation applicable throughout this chapter.

19 Section 2. That § 57A-9-105 be amended to read as follows:

20 57A-9-105. (a) A secured party has control of electronic chattel paper if a system employed  
21 for evidencing the transfer of interests in the chattel paper reliably establishes the secured party  
22 as the person to which the chattel paper was assigned.

23 (b) A system satisfies subsection (a) and a secured party has control of electronic chattel  
24 paper, if the record or records comprising the chattel paper are created, stored, and assigned in

such a manner that:

- (1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) The authoritative copy identifies the secured party as the assignee of the record or records;
- (3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) Copies or ~~revisions~~ amendments that add or change an identified assignee of the authoritative copy can be made only with the ~~participation~~ consent of the secured party;
- (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) Any ~~revision~~ amendment of the authoritative copy is readily identifiable as ~~an~~ authorized or unauthorized ~~revision~~.

Section 3. That § 57A-9-307 be amended to read as follows:

57A-9-307. (a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

- (1) A debtor who is an individual is located at the individual's principal residence.
- (2) A debtor that is an organization and has only one place of business is located at its place of business.
- (3) A debtor that is an organization and has more than one place of business is located

1 at its chief executive office.

2 (c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive  
3 office, as applicable, is located in a jurisdiction whose law generally requires information  
4 concerning the existence of a nonpossessory security interest to be made generally available in  
5 a filing, recording, or registration system as a condition or result of the security interest's  
6 obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection  
7 (b) does not apply, the debtor is located in the District of Columbia.

8 (d) A person that ceases to exist, have a residence, or have a place of business continues to  
9 be located in the jurisdiction specified by subsections (b) and (c).

10 (e) A registered organization that is organized under the law of a state is located in that state.

11 (f) Except as otherwise provided in subsection (i), a registered organization that is organized  
12 under the law of the United States and a branch or agency of a bank that is not organized under  
13 the law of the United States or a State are located:

14 (1) In the state that the law of the United States designates, if the law designates a state  
15 of location;

16 (2) In the state that the registered organization, branch, or agency designates, if the law  
17 of the United States authorizes the registered organization, branch, or agency to  
18 designate its state of location, including by designating its main office, home office,  
19 or other comparable office; or

20 (3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

21 (g) A registered organization continues to be located in the jurisdiction specified by  
22 subsection (e) or (f) notwithstanding:

23 (1) The suspension, revocation, forfeiture, or lapse of the registered organization's status  
24 as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.

Section 4. That § 57A-9-311 be amended to read as follows:

57A-9-311. (a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt § 57A-9-310(a);

(2) A certificate-of-title statute of this state under the law of which indication of a security interest on the certificate of title is required as a condition of perfection; or

(3) A ~~certificate-of-title~~ statute of another jurisdiction which provides for a security interest to be indicated on ~~the~~ a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing

1 of a financing statement under this article. Except as otherwise provided in subsection (d) and  
2 §§ 57A-9-313 and 57A-9-316(d) and (e) for goods covered by a certificate of title, a security  
3 interest in property subject to a statute, regulation, or treaty described in subsection (a) may be  
4 perfected only by compliance with those requirements, and a security interest so perfected  
5 remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

6 (c) Except as otherwise provided in subsection (d) and § 57A-9-316(d) and (e), duration and  
7 renewal of perfection of a security interest perfected by compliance with the requirements  
8 prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the  
9 statute, regulation, or treaty. In other respects, the security interest is subject to this article.

10 (d) During any period in which collateral subject to a statute specified in subsection (a)(2)  
11 is inventory held for sale or lease by a person or leased by that person as lessor and that person  
12 is in the business of selling goods of that kind, this section does not apply to a security interest  
13 in that collateral created by that person.

14 Section 5. That § 57A-9-316 be amended to read as follows:

15 57A-9-316. (a) A security interest perfected pursuant to the law of the jurisdiction  
16 designated in § 57A-9-301(1) or 57A-9-305(c) remains perfected until the earliest of:

- 17 (1) The time perfection would have ceased under the law of that jurisdiction;  
18 (2) The expiration of four months after a change of the debtor's location to another  
19 jurisdiction; or  
20 (3) The expiration of one year after a transfer of collateral to a person that thereby  
21 becomes a debtor and is located in another jurisdiction.

22 (b) If a security interest described in subsection (a) becomes perfected under the law of the  
23 other jurisdiction before the earliest time or event described in that subsection, it remains  
24 perfected thereafter. If the security interest does not become perfected under the law of the other



jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- (1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- (2) Thereafter the collateral is brought into another jurisdiction; and
- (3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under § 57A-9-311(b) or 57A-9-313 are not satisfied before the earlier of:

- (1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or
- (2) The expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated

1 person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's  
2 jurisdiction, as applicable, remains perfected until the earlier of:

- 3 (1) The time the security interest would have become unperfected under the law of that  
4 jurisdiction; or  
5 (2) The expiration of four months after a change of the applicable jurisdiction to another  
6 jurisdiction.

7 (g) If a security interest described in subsection (f) becomes perfected under the law of the  
8 other jurisdiction before the earlier of the time or the end of the period described in that  
9 subsection, it remains perfected thereafter. If the security interest does not become perfected  
10 under the law of the other jurisdiction before the earlier of that time or the end of that period,  
11 it becomes unperfected and is deemed never to have been perfected as against a purchaser of the  
12 collateral for value.

13 (h) The following rules apply to collateral to which a security interest attaches within four  
14 months after the debtor changes its location to another jurisdiction:

- 15 (1) A financing statement filed before the change pursuant to the law of the jurisdiction  
16 designated in § 57A-9-301(1) or 57A-9-305(c) is effective to perfect a security  
17 interest in the collateral if the financing statement would have been effective to  
18 perfect a security interest in the collateral had the debtor not changed its location;  
19 (2) If a security interest perfected by a financing statement that is effective under  
20 paragraph (1) becomes perfected under the law of the other jurisdiction before the  
21 earlier of the time the financing statement would have become ineffective under the  
22 law of the jurisdiction designated in § 57A-9-301(1) or 57A-9-305(c) or the  
23 expiration of the four-month period, it remains perfected thereafter. If the security  
24 interest does not become perfected under the law of the other jurisdiction before the

1 earlier time or event, it becomes unperfected and is deemed never to have been  
2 perfected as against a purchaser of the collateral for value.

3 (i) If a financing statement naming an original debtor is filed pursuant to the law of the  
4 jurisdiction designated in § 57A-9-301(1) or 57A-9-305(c) and the new debtor is located in  
5 another jurisdiction, the following rules apply:

6 (1) The financing statement is effective to perfect a security interest in collateral in  
7 which the new debtor has or acquires rights before or within four months after the  
8 new debtor becomes bound under § 57A-9-203(d), if the financing statement would  
9 have been effective to perfect a security interest in the collateral if the collateral been  
10 acquired by the original debtor.

11 (2) A security interest perfected by the financing statement and which becomes perfected  
12 under the law of the other jurisdiction before the earlier of the expiration of the four-  
13 month period or the time the financing statement would have become ineffective  
14 under the law of the jurisdiction designated in § 57A-9-301(1) or 57A-9-305(c)  
15 remains perfected thereafter. A security interest that is perfected by the financing  
16 statement but which does not become perfected under the law of the other  
17 jurisdiction before the earlier time or event becomes unperfected and is deemed never  
18 to have been perfected as against a purchaser of the collateral for value.

19 Section 6. That § 57A-9-317 be amended to read as follows:

20 57A-9-317. (a) A security interest or agricultural lien is subordinate to the rights of:

21 (1) A person entitled to priority under § 57A-9-322; and  
22 (2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor  
23 before the earlier of the time:

24 (A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in § 57A-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certified security ~~certificate~~ takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel paper, electronic documents, general intangibles, or investment property~~ collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in § 57A-9-320 and 57A-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Section 7. That § 57A-9-326 be amended to read as follows:

57A-9-326. (a) Subject to subsection (b), a security interest that is created by a new debtor ~~which is in collateral in which the new debtor has or acquires rights and is~~ perfected by a filed financing statement that is ~~effective solely under § 57A-9-508 in collateral in which a new~~

1 ~~debtor has or acquires rights~~ would be ineffective to perfect the security interest but for the  
2 application of § 57A-9-508 or §§ 57A-9-508 and 57A-9-316(i)(1) is subordinate to a security  
3 interest in the same collateral which is perfected other than by a filed financing statement that  
4 is effective solely under § 57A-9-508.

5 (b) The other provisions of this part determine the priority among conflicting security  
6 interests in the same collateral perfected by filed financing statements ~~that are effective solely~~  
7 ~~under § 57A-9-508~~ described in subsection (a). However, if the security agreements to which  
8 a new debtor became bound as debtor were not entered into by the same original debtor, the  
9 conflicting security interests rank according to priority in time of the new debtor's having  
10 become bound.

11 Section 8. That § 57A-9-406 be amended to read as follows:

12 57A-9-406. (a) Subject to subsections (b) through (i), an account debtor on an account,  
13 chattel paper, or a payment intangible may discharge its obligation by paying the assignor until,  
14 but not after, the account debtor receives a notification, authenticated by the assignor or the  
15 assignee, that the amount due or to become due has been assigned and that payment is to be  
16 made to the assignee. After receipt of the notification, the account debtor may discharge its  
17 obligation by paying the assignee and may not discharge the obligation by paying the assignor.

18 (b) Subject to subsection (h), notification is ineffective under subsection (a):

19 (1) If it does not reasonably identify the rights assigned;

20 (2) To the extent that an agreement between an account debtor and a seller of a payment  
21 intangible limits the account debtor's duty to pay a person other than the seller and  
22 the limitation is effective under law other than this article; or

23 (3) At the option of an account debtor, if the notification notifies the account debtor to  
24 make less than the full amount of any installment or other periodic payment to the

1 assignee, even if:

2 (A) Only a portion of the account, chattel paper, or payment intangible has been

3 assigned to that assignee;

4 (B) A portion has been assigned to another assignee; or

5 (C) The account debtor knows that the assignment to that assignee is limited.

6 (c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably  
7 furnish reasonable proof that the assignment has been made. Unless the assignee complies, the  
8 account debtor may discharge its obligation by paying the assignor, even if the account debtor  
9 has received a notification under subsection (a).

10 (d) Except as otherwise provided in subsection (e) and §§ 57A-2A-303 and 57A-9-407, and  
11 subject to subsection (h), a term in an agreement between an account debtor and an assignor or  
12 in a promissory note is ineffective to the extent that it:

13 (1) Prohibits, restricts, or requires the consent of the account debtor or person obligated  
14 on the promissory note to the assignment or transfer of, or the creation, attachment,  
15 perfection, or enforcement of a security interest in, the account, chattel paper,  
16 payment intangible, or promissory note; or

17 (2) Provides that the assignment or transfer or the creation, attachment, perfection, or  
18 enforcement of the security interest may give rise to a default, breach, right of  
19 recoupment, claim, defense, termination, right of termination, or remedy under the  
20 account, chattel paper, payment intangible, or promissory note.

21 (e) Subsection (d) does not apply to the sale of a payment intangible or promissory note  
22 other than a sale pursuant to a disposition under § 57A-9-610 or an acceptance of collateral  
23 under § 57A-9-620.

24 (f) Except as otherwise provided in §§ 57A-2A-303 and 57A-9-407 and subject to

subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section prevails over any inconsistent statute.

Section 9. That § 57A-9-408 be amended to read as follows:

57A-9-408. (a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated

1 on the promissory note or the account debtor to, the assignment or transfer of, or creation,  
2 attachment, or perfection of a security interest in, the promissory note, health-care-insurance  
3 receivable, or general intangible, is ineffective to the extent that the term:

4 (1) Would impair the creation, attachment, or perfection of a security interest; or

5 (2) Provides that the assignment or transfer or the creation, attachment, or perfection of  
6 the security interest may give rise to a default, breach, right of recoupment, claim,  
7 defense, termination, right of termination, or remedy under the promissory note,  
8 health-care-insurance receivable, or general intangible.

9 (b) Subsection (a) applies to a security interest in a payment intangible or promissory note  
10 only if the security interest arises out of a sale of the payment intangible or promissory note,  
11 other than a sale pursuant to a disposition under § 57A-9-610 or an acceptance of collateral  
12 under § 57A-9-620.

13 (c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a  
14 government, governmental body or official, person obligated on a promissory note, or account  
15 debtor to the assignment or transfer of, or creation of a security interest in, a promissory note,  
16 health-care-insurance receivable, or general intangible, including a contract, permit, license, or  
17 franchise between an account debtor and a debtor, is ineffective to the extent that the rule of  
18 law, statute, or regulation:

19 (1) Would impair the creation, attachment, or perfection of a security interest; or

20 (2) Provides that the assignment or transfer or the creation, attachment, or perfection of  
21 the security interest may give rise to a default, breach, right of recoupment, claim,  
22 defense, termination, right of termination, or remedy under the promissory note,  
23 health-care-insurance receivable, or general intangible.

24 (d) To the extent that a term in a promissory note or in an agreement between an account



1 debtor and a debtor which relates to a health-care-insurance receivable or general intangible or  
2 a rule of law, statute, or regulation described in subsection (c) would be effective under law  
3 other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or  
4 perfection of a security interest in the promissory note, health-care-insurance receivable, or  
5 general intangible:

6 (1) Is not enforceable against the person obligated on the promissory note or the account  
7 debtor;

8 (2) Does not impose a duty or obligation on the person obligated on the promissory note  
9 or the account debtor;

10 (3) Does not require the person obligated on the promissory note or the account debtor  
11 to recognize the security interest, pay or render performance to the secured party, or  
12 accept payment or performance from the secured party;

13 (4) Does not entitle the secured party to use or assign the debtor's rights under the  
14 promissory note, health-care-insurance receivable, or general intangible, including  
15 any related information or materials furnished to the debtor in the transaction giving  
16 rise to the promissory note, health-care-insurance receivable, or general intangible;

17 (5) Does not entitle the secured party to use, assign, possess, or have access to any trade  
18 secrets or confidential information of the person obligated on the promissory note or  
19 the account debtor; and

20 (6) Does not entitle the secured party to enforce the security interest in the promissory  
21 note, health-care-insurance receivable, or general intangible.

22 (e) This section prevails over any inconsistent statute.

23 Section 10. That § 57A-9-502 be amended to read as follows:

24 57A-9-502. (a) Subject to subsection (b), a financing statement is sufficient only if it:

1       (1)   Provides the name of the debtor and either the social security number or the internal  
2           revenue service taxpayer identification number of the debtor;

3       (2)   Provides the name of the secured party or a representative of the secured party; and

4       (3)   Indicates the collateral covered by the financing statement.

5       (b) Except as otherwise provided in § 57A-9-501(b), to be sufficient, a financing statement  
6   that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and  
7   covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

8       (1)   Indicate that it covers this type of collateral;

9       (2)   Indicate that it is to be filed for record in the real property records;

10      (3)   Provide a description of the real property to which the collateral is related sufficient  
11           to give constructive notice of a mortgage under the law of this State if the description  
12           were contained in a record of the mortgage of the real property. A financing  
13           statement covering timber to be cut or covering minerals or the like (including oil and  
14           gas) or accounts subject to § 57A-9-301, or a financing statement filed as a fixture  
15           filing where the debtor is not a transmitting utility, must show that it covers this type  
16           of collateral, must recite that it is to be filed for record in the real estate records, and  
17           the financing statement must contain a description of the real estate sufficient if it  
18           were contained in a mortgage of the real estate to give constructive notice of the  
19           mortgage under the law of this state. If the debtor does not have an interest of record  
20           in the real estate, the financing statement must show the name of a record owner. No  
21           description of the real estate or the name of the record owner thereof is required for  
22           a fixture filing where the debtor is a transmitting utility; and

23      (4)   If the debtor does not have an interest of record in the real property, provide the name  
24           of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

- (1) The record indicates the goods or accounts that it covers;
- (2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
- (3) The record satisfies the requirements for a financing statement in this section ~~other than an indication, but:~~
  - (A) The record need not indicate that it is to be filed in the real property records; and
  - (B) The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom § 57A-9-503(a)(4) applies; and
- (4) The record is recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

Section 11. That § 57A-9-503 be amended to read as follows:

57A-9-503. (a) A financing statement sufficiently provides the name of the debtor:

- (1) ~~If~~ Except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name ~~of the debtor indicated~~ that is stated to be the registered organization's name on the public organic record ~~of~~ most recently

1 filed with or issued or enacted by the debtor's registered organization's jurisdiction  
2 of organization which shows the debtor to have been organized purports to state,  
3 amend, or restate the registered organization's name;

4 (2) If Subject to subsection (f), if the debtor is a decedent's estate collateral is being  
5 administered by the personal representative of a decedent, only if the financing  
6 statement provides, as the name of the debtor, the name of the decedent and, in a  
7 separate part of the financing statement, indicates that the debtor is an estate  
8 collateral is being administered by a personal representative;

9 (3) If the debtor is a trust or a trustee acting with respect to property held in trust, only  
10 if the financing statement:

11 ———— (A) Provides the name specified for the trust in its organic documents or, if no  
12 name is specified, provides the name of the settlor and additional information  
13 sufficient to distinguish the debtor from other trusts having one or more of the  
14 same settlors; and

15 ———— (B) Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a  
16 trustee acting with respect to property held in trust collateral is held in a trust  
17 that is not a registered organization, only if the financing statement:

18 (A) Provides, as the name of the debtor:

19 (i) If the organic record of the trust specifies a name for the trust, the name  
20 so specified; or

21 (ii) If the organic record of the trust does not specify a name for the trust,  
22 the name of the settlor or testator; and

23 (B) In a separate part of the financing statement:

24 (i) If the name is provided in accordance with subparagraph (A)(i),

1 indicates that the collateral is held in a trust; or

2 (ii) If the name is provided in accordance with subparagraph (A)(ii),  
3 provides additional information sufficient to distinguish the trust from  
4 other trusts having one or more of the same settlors or the same testator  
5 and indicates that the collateral is held in a trust, unless the additional  
6 information so indicates;

7 (4) Subject to subsection (g), if the debtor is an individual to whom this state has issued  
8 a driver license that has not expired, only if it provides the name of the individual  
9 which is indicated on the driver license;

10 (5) If the debtor is an individual to whom paragraph (4) does not apply, only if it  
11 provides the individual name of the debtor or the surname and first personal name of  
12 the debtor; and

13 ~~(4)~~ (6) In other cases:

14 (A) If the debtor has a name, only if provides the ~~individual~~ or organizational  
15 name of the debtor; and

16 (B) If the debtor does not have a name, only if it provides the names of the  
17 partners, members, associates, or other persons comprising the debtor in a  
18 manner that each name provided would be sufficient if the person named were  
19 the debtor.

20 (b) A financing statement that provides the name of the debtor in accordance with subsection  
21 (a) is not rendered ineffective by the absence of:

22 (1) A trade name or other name of the debtor; or

23 (2) Unless required under subsection ~~(a)(4)(B)~~ (a)(6)(B), names of partners, members,  
24 associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).

(g) If this state has issued to an individual more than one driver license of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

(h) In this section, the "name of the settlor or testator" means:

(1) If the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or enacted by the registered organization; or

(2) In other cases, the name of the settlor or testator indicated in the trust's organic record.

Section 12. That § 57A-9-507 be amended to read as follows:

57A-9-507. (a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and § 57A-9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in

1 the financing statement becomes seriously misleading under § 57A-9-506.

2 (c) If ~~a debtor so changes its~~ the name that a filed financing statement provides for a debtor  
3 becomes insufficient as the name of the debtor under § 57A-9-503(a) so that the financing  
4 statement becomes seriously misleading under § 57A-9-506:

5 (1) The financing statement is effective to perfect a security interest in collateral acquired  
6 by the debtor before, or within four months after, the ~~change~~ filed financing  
7 statement becomes seriously misleading; and

8 (2) The financing statement is not effective to perfect a security interest in collateral  
9 acquired by the debtor more than four months after the ~~change~~ filed financing  
10 statement becomes seriously misleading, unless an amendment to the financing  
11 statement which renders the financing statement not seriously misleading is filed  
12 within four months after ~~the change~~ that event.

13 Section 13. That § 57A-9-515 be amended to read as follows:

14 57A-9-515. (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed  
15 financing statement is effective for a period of five years after the date of filing. Financing  
16 statements filed before July 1, 1997, are effective for a period of five years from the date of  
17 filing and thereafter for a period of sixty days.

18 The expiration date established by a financing statement filed prior to July 1, 1997, whether  
19 or not continued by a continuation statement shall remain in full force and effect and is not  
20 diminished by any subsequent amendments to this chapter.

21 (b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing  
22 statement filed in connection with a manufactured-home transaction is effective for a period of  
23 thirty years after the date of filing if it indicates that it is filed in connection with a  
24 manufactured-home transaction.

1 (c) The effectiveness of a filed financing statement lapses on the expiration of the period of  
2 its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection  
3 (d). Upon lapse, a financing statement ceases to be effective and any security interest or  
4 agricultural lien that was perfected by the financing statement becomes unperfected, unless the  
5 security interest is perfected otherwise. If the security interest or agricultural lien becomes  
6 unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the  
7 collateral for value.

8 (d) A continuation statement may be filed only within six months before the expiration of  
9 the five-year period specified in subsection (a) or the thirty-year period specified in subsection  
10 (b), whichever is applicable.

11 However, for financing statements filed before July 1, 1997, a continuation statement may  
12 be filed within six months before and sixty days after the expiration of the five-year period.

13 (e) Except as otherwise provided in § 57A-9-510, upon timely filing of a continuation  
14 statement, the effectiveness of the initial financing statement continues for a period of five years  
15 and, for initial financing statements filed before July 1, 1997, the effectiveness of the initial  
16 financing statement continues for a period of five years and sixty days, commencing on the day  
17 on which the financing statement would have become ineffective in the absence of the filing.  
18 Upon the expiration of the five-year period, the financing statement lapses in the same manner  
19 as provided in subsection (c), unless, before the lapse, another continuation statement is filed  
20 pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner  
21 to continue the effectiveness of the initial financing statement.

22 (f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the  
23 financing statement is effective until a termination statement is filed.

24 (g) A record of a mortgage that is effective as a financing statement filed as a fixture filing



under § 57A-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Section 14. That § 57A-9-516 be amended to read as follows:

57A-9-516. (a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or ~~correction~~ information statement, the record:

(i) Does not identify the initial financing statement as required by § 57A-9-512 or 57A-9-518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under § 57A-9-515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's

1                   ~~last name~~ surname; or

2           (D)    In the case of a record filed or recorded in the filing office described in § 57A-  
3                   9-501(a)(1), the record does not provide a sufficient description of the real  
4                   property to which it relates;

5       (4)    In the case of an initial financing statement or an amendment that adds a secured  
6           party of record, the record does not provide a name and mailing address for the  
7           secured party of record;

8       (5)    In the case of an initial financing statement or an amendment that provides a name  
9           of a debtor which was not previously provided in the financing statement to which  
10          the amendment relates, the record does not:

11           (A)   Provide a mailing address for the debtor; or

12           (B)   Indicate whether the name provided as the name of the debtor is the name of  
13                  an individual or an organization; ~~or~~

14   ~~———— (C) — If the financing statement indicates that the debtor is an organization, provide:~~

15   ~~———— (i) — A type of organization for the debtor;~~

16   ~~———— (ii) — A jurisdiction of organization for the debtor; or~~

17   ~~———— (iii) — An organizational identification number for the debtor or indicate that~~  
18                  ~~the debtor has none;~~

19       (6)    In the case of an assignment reflected in an initial financing statement under § 57A-9-  
20           514(a) or an amendment filed under § 57A-9-514(b), the record does not provide a  
21           name and mailing address for the assignee; or

22       (7)    In the case of a continuation statement, the record is not filed within the six-month  
23           period prescribed by § 57A-9-515(d).

24       (c) For purposes of subsection (b):

1       (1)    A record does not provide information if the filing office is unable to read or decipher  
2            the information; and

3       (2)    A record that does not indicate that it is an amendment or identify an initial financing  
4            statement to which it relates, as required by § 57A-9-512, 57A-9-514, or 57A-9-518,  
5            is an initial financing statement.

6       (d) A record that is communicated to the filing office with tender of the filing fee, but which  
7       the filing office refuses to accept for a reason other than one set forth in subsection (b), is  
8       effective as a filed record except as against a purchaser of the collateral which gives value in  
9       reasonable reliance upon the absence of the record from the files.

10      Section 15. That § 57A-9-518 be amended to read as follows:

11      57A-9-518. (a) A person may file in the filing office ~~a correction~~ an information statement  
12      with respect to a record indexed there under the person's name if the person believes that the  
13      record is inaccurate or was wrongfully filed.

14      (b) ~~A correction~~ An information statement under subsection (a) must:

15      (1)    Identify the record to which it relates by:

16            (A)    The file number assigned to the initial financing statement to which the record  
17                    relates; and

18            (B)    If the ~~correction~~ information statement relates to a record filed or recorded in  
19                    a filing office described in § 57A-9-501(a)(1), the date and time that the initial  
20                    financing statement was filed or recorded and the information specified in  
21                    § 57A-9-502(b);

22      (2)    Indicate that it is ~~a correction~~ an information statement; and

23      (3)    Provide the basis for the person's belief that the record is inaccurate and indicate the  
24            manner in which the person believes the record should be amended to cure any

1           inaccuracy or provide the basis for the person's belief that the record was wrongfully  
2           filed.

3           (c) A person may file in the filing office an information statement with respect to a record  
4 filed there if the person is a secured party of record with respect to the financing statement to  
5 which the record relates and believes that the person that filed the record was not entitled to do  
6 so under § 57A-9-509(d).

7           (d) An information statement under subsection (c) must:

8           (1) Identify the record to which it relates by:

9           (a) The file number assigned to the initial financing statement to which the record  
10 relates; and

11           (b) If the statement relates to a record filed or recorded in a filing office described  
12 in § 57A-9-501(a)(1), the date and time that the initial financing statement was  
13 filed or recorded and the information specified in § 57A-9-502(b);

14           (2) Indicate that it is an information statement; and

15           (3) Provide the basis for the person's belief that the person that filed the record was not  
16 entitled to do so under § 57A-9-509(d).

17           (e) The filing of a ~~correction~~ an information statement does not affect the effectiveness of  
18 an initial financing statement or other filed record.

19           Section 16. That § 57A-9-521 be amended to read as follows:

20           57A-9-521. (a) A filing office that accepts written records may not refuse to accept a written  
21 initial financing statement in the following form and format except for a reason set forth in  
22 § 57A-9-516(b).

1



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only deb Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME				
OR 1b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
1c MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2. DEBTOR'S NAME: Provide only deb Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME				
OR 2b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
2c MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only pos Secured Party name (3a or 3b)

3a ORGANIZATION'S NAME				
OR 3b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
3c MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

4. COLLATERAL: This financing statement covers the following collateral

5. Check <u>only</u> if applicable and check <u>only</u> one box. Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and instructions); <input type="checkbox"/> being administered by a Decedent's Personal Representative	
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public Finance Transaction <input type="checkbox"/> Manufactured Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessor/Lessor <input type="checkbox"/> Consignor/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailee <input type="checkbox"/> Licensee/Licensee	
8. OPTIONAL FILER REFERENCE DATA:	

UCC FINANCING STATEMENT (Form UCC1) (Rev. 04/20/11)

1

**UCC FINANCING STATEMENT ADDENDUM**

**FOLLOW INSTRUCTIONS**

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because individual Debtor name did not fit, check here ☐

OR	9a. ORGANIZATION'S NAME
	9b. INDIVIDUAL'S SURNAME
	FIRST PERSONAL NAME
	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c.

OR	10a. ORGANIZATION'S NAME
	10b. INDIVIDUAL'S SURNAME
	INDIVIDUAL'S FIRST PERSONAL NAME
	INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

OR	11a. ORGANIZATION'S NAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
	11b. INDIVIDUAL'S SURNAME			
	11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS (if applicable).

14. This FINANCING STATEMENT:

☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad) (Rev. 04/20/11)

2

- 1 (b) A filing office that accepts written records may not refuse to accept a written record in
- 2 the following form and format except for a reason set forth in § 57A-9-516(b).

<b>UCC FINANCING STATEMENT AMENDMENT</b> FOLLOW INSTRUCTIONS			
<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b> _____ <b>B. E-MAIL CONTACT AT FILER (optional)</b> _____ <b>C. SEND ACKNOWLEDGMENT TO: (Name and Address)</b> <div style="border: 1px solid black; height: 80px; margin-top: 5px;"></div>			
THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY			
<b>1a. INITIAL FINANCING STATEMENT FILE NUMBER</b> _____		<b>1b.</b> <input type="checkbox"/> This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. <b>Filer - attach Amendment A-Amendment H (Form UCC-3A-3) and provide Debtor's name in item 1c.</b>	
<b>2. <input type="checkbox"/> TERMINATION:</b> Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement.			
<b>3. <input type="checkbox"/> ASSIGNMENT</b> (full or partial). Provide name of Assignee in item 7a or 7b, <u>and</u> address of Assignee in item 7c <u>and</u> name of Assignor in item 9. For partial assignment, complete items 7 and 9 <u>and</u> also indicate affected collateral in item 8.			
<b>4. <input type="checkbox"/> CONTINUATION:</b> Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.			
<b>5. <input type="checkbox"/> PARTY INFORMATION CHANGE:</b> Check <u>one</u> of these two boxes: <input type="checkbox"/> Debtor <u>or</u> <input type="checkbox"/> Secured Party of record. <b>AND</b> Check <u>one</u> of these three boxes to: <input type="checkbox"/> CHANGE name and/or address. Complete item 6a or 6b, <u>and</u> item 7a or 7b, <u>and</u> item 7c. <input type="checkbox"/> ADD name. Complete item 7a or 7b, <u>and</u> item 7c. <input type="checkbox"/> DELETE name. Give record name to be deleted in item 6a or 6b.			
<b>6. CURRENT RECORD INFORMATION:</b> Complete for Party Information Change - provide only <u>one</u> name (6a or 6b).			
6a ORGANIZATION'S NAME _____			
OR 6b INDIVIDUAL'S SURNAME _____ FIRST PERSONAL NAME _____ ADDITIONAL NAME(S) INITIAL(S) _____ SUFFIX _____			
<b>7. CHANGED OR ADDED INFORMATION:</b> Complete for Assignment or Party Information Change - provide only <u>one</u> name (7a or 7b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name).			
7a ORGANIZATION'S NAME _____			
OR 7b INDIVIDUAL'S SURNAME _____ INDIVIDUAL'S FIRST PERSONAL NAME _____ INDIVIDUAL'S ADDITIONAL NAME(S) INITIAL(S) _____ SUFFIX _____			
7c MAILING ADDRESS _____ CITY _____ STATE _____ POSTAL CODE _____ COUNTRY _____			
<b>8. <input type="checkbox"/> COLLATERAL CHANGE:</b> <u>Also</u> check <u>one</u> of these four boxes: <input type="checkbox"/> ADD collateral <input type="checkbox"/> DELETE collateral <input type="checkbox"/> RESTATE covered collateral <input type="checkbox"/> ASSIGN collateral. Indicate collateral: _____			
<b>9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:</b> Provide only <u>one</u> name (9a or 9b) (name of Assignor, if this is an Assignment). If this is an Amendment authorized by a <b>DEBTOR</b> , check here <input type="checkbox"/> and provide name of authorizing Debtor.			
9a ORGANIZATION'S NAME _____			
OR 9b INDIVIDUAL'S SURNAME _____ FIRST PERSONAL NAME _____ ADDITIONAL NAME(S) INITIAL(S) _____ SUFFIX _____			
<b>10. OPTIONAL FILER REFERENCE DATA:</b> _____			

UCC FINANCING STATEMENT AMENDMENT (Form UCC3) (Rev. 04/20/11)

1

UCC FINANCING STATEMENT AMENDMENT ADDENDUM			
FOLLOW INSTRUCTIONS			
<b>11. INITIAL FINANCING STATEMENT FILE NUMBER:</b> Same as item 1a on Amendment form			
<b>12. NAME OF PARTY AUTHORIZING THIS AMENDMENT:</b> Same as item 3 on Amendment form			
12a. ORGANIZATION'S NAME			
OR			
12b. INDIVIDUAL'S SURNAME			
FIRST PERSONAL NAME			
ADDITIONAL NAME(S) (INITIAL(S)) SUFFIX			
<b>THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY</b>			
<b>13. Name of DEBTOR on related financing statement</b> (Name of a current Debtor of record required for indexing purposes only in some filing offices - see instruction item 13). Provide only Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see instructions if name does not fit			
13a. ORGANIZATION'S NAME			
OR			
13b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S) (INITIAL(S)) SUFFIX			
<b>14. ADDITIONAL SPACE FOR ITEM 9 (Collateral):</b>			
<b>16. This FINANCING STATEMENT AMENDMENT</b>		<b>17. Description of real estate:</b>	
<input type="checkbox"/> covers timber to be cut <input type="checkbox"/> covers as-extracted collateral <input type="checkbox"/> is filed as a future filing			
<b>18. Name and address of a RECORD OWNER of real estate described in item 17</b> (if Debtor does not have a record interest)			
<b>19. MISCELLANEOUS:</b>			

UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad) (Rev. 04/20/11)

- 2 Section 17. That § 57A-9-607 be amended to read as follows:
- 3 57A-9-607. (a) If so agreed, and in any event after default, a secured party:
- 4 (1) May notify an account debtor or other person obligated on collateral to make
- 5 payment or otherwise render performance to or for the benefit of the secured party;
- 6 (2) May take any proceeds to which the secured party is entitled under § 57A-9-315;
- 7 (3) May enforce the obligations of an account debtor or other person obligated on



collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under § 57A-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under § 57A-9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

(A) A default has occurred with respect to the obligation secured by the mortgage;

and

(B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

1 (d) A secured party may deduct from the collections made pursuant to subsection (c)  
2 reasonable expenses of collection and enforcement, including reasonable attorney's fees and  
3 legal expenses incurred by the secured party.

4 (e) This section does not determine whether an account debtor, bank, or other person  
5 obligated on collateral owes a duty to a secured party.

6 Section 18. There is hereby appropriated from the general fund the sum of one hundred sixty  
7 thousand dollars (\$160,000), or so much thereof as may be necessary, to the secretary of state  
8 for the purpose of complying with the provisions of this Act.

9 Section 19. The secretary of state shall approve vouchers and the state auditor shall draw  
10 warrants to pay expenditures authorized in this Act.

11 Section 20. Whereas, section 18 of this Act is necessary for the support of the state  
12 government and its existing public institutions, an emergency is hereby declared to exist, and  
13 section 18 of this Act shall be in full force and effect from and after its passage and approval.

14 Section 9-801. This Act takes effect on July 1, 2013.

15 Section 9-802. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read  
16 as follows:

17 (a) Except as otherwise provided in this part, this Act applies to a transaction or lien within  
18 its scope, even if the transaction or lien was entered into or created before July 1, 2013.

19 (b) This Act does not affect an action, case, or proceeding commenced before July 1, 2013.

20 Section 9-803. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read  
21 as follows:

22 (a) A security interest that is a perfected security interest immediately before this Act takes  
23 effect is a perfected security interest under chapter 57A-9 as amended by this Act if, when this  
24 Act takes effect, the applicable requirements for attachment and perfection under chapter 57A-9

as amended by this Act are satisfied without further action.

(b) Except as otherwise provided in section 9-805 of this Act, if, immediately before this Act takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under chapter 57A-9 as amended by this Act are not satisfied when this Act takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under chapter 57A-9 as amended by this Act are satisfied within one year after this Act takes effect.

Section 9-804. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as follows:

A security interest that is an unperfected security interest immediately before this Act takes effect becomes a perfected security interest:

(1) Without further action, when this Act takes effect if the applicable requirements for perfection under chapter-57A-9 as amended by this Act are satisfied before or at that time; or

(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

Section 9-805. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as follows:

(a) The filing of a financing statement before this Act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under chapter 57A-9 as amended by this Act.

(b) This Act does not render ineffective an effective financing statement that, before this Act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in chapter 57A-9 as it existed before the effective

1 date of this Act. However, except as otherwise provided in subsections (c) and (d) and section  
2 9-806 of this Act, the financing statement ceases to be effective:

3 (1) If the financing statement is filed in this state, at the time the financing statement  
4 would have ceased to be effective had this Act not taken effect; or

5 (2) If the financing statement is filed in another jurisdiction, at the earlier of:

6 (A) The time the financing statement would have ceased to be effective under the  
7 law of that jurisdiction; or

8 (B) June 30, 2018.

9 (c) The filing of a continuation statement after this Act takes effect does not continue the  
10 effectiveness of a financing statement filed before this Act takes effect. However, upon the  
11 timely filing of a continuation statement after this Act takes effect and in accordance with the  
12 law of the jurisdiction governing perfection as provided in chapter 57A-9 as amended by this  
13 Act, the effectiveness of a financing statement filed in the same office in that jurisdiction before  
14 this Act takes effect continues for the period provided by the law of that jurisdiction.

15 (d) Subsection (b)(2)(B) applies to a financing statement that, before this Act takes effect,  
16 is filed against a transmitting utility and satisfies the applicable requirements for perfection  
17 under the law of the jurisdiction governing perfection as provided in chapter 57A-9 as it existed  
18 prior to this Act, only to the extent that chapter 57A-9 as amended by this Act provides that the  
19 law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs  
20 perfection of a security interest in collateral covered by the financing statement.

21 (e) A financing statement that includes a financing statement filed before this Act takes  
22 effect and a continuation statement filed after this Act takes effect is effective only to the extent  
23 that it satisfies the requirements of §§ 57A-9-501 to 57A-9-530, inclusive, as amended by this  
24 Act for an initial financing statement. A financing statement that indicates that the debtor is a

1 decedent's estate indicates that the collateral is being administered by a personal representative  
2 within the meaning of § 57A-9-503(a)(2) as amended by this Act. A financing statement that  
3 indicates that the debtor is a trust or is a trustee acting with respect to property held in trust  
4 indicates that the collateral is held in a trust within the meaning of § 57A-9-503(a)(3) as  
5 amended by this Act.

6 Section 9-806. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 (a) The filing of an initial financing statement in the office specified in § 57A-9-501  
9 continues the effectiveness of a financing statement filed before this Act takes effect if:

- 10 (1) The filing of an initial financing statement in that office would be effective to perfect  
11 a security interest under chapter 57A-9 as amended by this Act;  
12 (2) The pre-effective-date financing statement was filed in an office in another state; and  
13 (3) The initial financing statement satisfies subsection (c).

14 (b) The filing of an initial financing statement under subsection (a) continues the  
15 effectiveness of the pre-effective-date financing statement:

- 16 (1) If the initial financing statement is filed before this Act takes effect, for the period  
17 provided in unamended § 57A-9-515 as found prior to July 1, 2015, with respect to  
18 an initial financing statement; and  
19 (2) If the initial financing statement is filed after this Act takes effect, for the period  
20 provided in § 57A-9-515 as amended by this Act with respect to an initial financing  
21 statement.

22 (c) To be effective for purposes of subsection (a), an initial financing statement must:

- 23 (1) Satisfy the requirements of §§ 57A-9-501 to 57A-9-530, inclusive, as amended by  
24 this Act for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

Section 9-807. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as follows:

(a) In this section, "pre-effective-date financing statement" means a financing statement filed before this Act takes effect.

(b) After this Act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in chapter 57A-9 as amended by this Act. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this Act takes effect only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in § 57A-9-501;

(2) An amendment is filed in the office specified in § 57A-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9-806(c) of this Act; or

(3) An initial financing statement that provides the information as amended and satisfies

1           section 9-806(c) of this Act is filed in the office specified in § 57A-9-501.

2           (d) If the law of this state governs perfection of a security interest, the effectiveness of a  
3 pre-effective-date financing statement may be continued only under section 9-805(c) and ( e)  
4 of this Act or section 9-806 of this Act.

5           (e) Whether or not the law of this state governs perfection of a security interest, the  
6 effectiveness of a pre-effective-date financing statement filed in this state may be terminated  
7 after this Act takes effect by filing a termination statement in the office in which the  
8 pre-effective-date financing statement is filed, unless an initial financing statement that satisfies  
9 section 9-806(c) of this Act has been filed in the office specified by the law of the jurisdiction  
10 governing perfection as provided in chapter 57A-9 as amended by this Act as the office in which  
11 to file a financing statement.

12           Section 9-808. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read  
13 as follows:

14           A person may file an initial financing statement or a continuation statement under this part  
15 if:

16           (1)   The secured party of record authorizes the filing; and

17           (2)   The filing is necessary under this part:

18                   (A)   To continue the effectiveness of a financing statement filed before this Act  
19                           takes effect; or

20                   (B)   To perfect or continue the perfection of a security interest.

21           Section 9-809. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read  
22 as follows:

23           This Act determines the priority of conflicting claims to collateral. However, if the relative  
24 priorities of the claims were established before this Act takes effect, chapter 57A-9-as it existed

1     before July 1, 2013 determines priority.



# State of South Dakota

## EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

742T0733

### SENATE ENGROSSED NO. **HB 1230** - 2/23/2012

Introduced by: Representatives Nelson (Stace), Brunner, Feickert, Hansen (Jon), Hickey, Hoffman, Hubbel, Hunhoff (Bernie), Kirschman, Kloucek, Kopp, Liss, Magstadt, Olson (Betty), Rozum, Russell, Tornow, Tulson, Van Gerpen, and Venner and Senators Adelstein, Frerichs, Hundstad, and Maher

1 FOR AN ACT ENTITLED, An Act to modify the publication requirements for water rights  
2 applications.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 46-2A-4 be amended to read as follows:

5 46-2A-4. Except in the case of an application for a well driller license or a well pump  
6 installer license, if a recommendation is to approve or defer an application or if an applicant has  
7 filed a petition to oppose a recommendation to deny an application, the applicant shall publish  
8 notice of the application and recommendation at least once ~~a week for two successive weeks~~ in  
9 at least one official newspaper in each county where the water will be diverted or used or where  
10 project works will be located. The official newspaper shall be selected by the chief engineer and  
11 shall be a newspaper designated as an official newspaper pursuant to § 7-18-3. If the official  
12 newspaper is a weekly newspaper, then the notice shall also be published at least once in a daily  
13 newspaper. The daily newspaper selected by the chief engineer shall be located as near as  
14 possible to the location where the water will be diverted or used. Public notice of the application



1 shall also be posted on the department's website until final action is taken on the application.

2 The ~~second~~ publication shall be at least twenty days before the first day of the Water  
3 Management Board meeting at which the matter is noticed to be heard. No application for a  
4 permit, license, or amendment may be considered and approved by the board until proof of all  
5 required publications has been filed with the chief engineer. The notice, which shall be provided  
6 by the chief engineer to the applicable newspapers, shall include the following, as applicable:

- 7 (1) The name and address of the applicant;
- 8 (2) A brief description of the project, including, where applicable, the proposed place or  
9 places of use of the water or facilities, including the point of diversion, the amount  
10 of water to be used and the purpose for which the water or facility is to be used;
- 11 (3) A brief statement describing the recommendation and the reasons for the  
12 recommendation;
- 13 (4) A statement that any interested person who intends to participate in the hearing shall  
14 file a petition to oppose or support the application and that the petition shall be filed  
15 with the chief engineer and applicant at least ten days before the published date for  
16 hearing;
- 17 (5) A statement that a petition to oppose or support an application may be informal, but  
18 shall be in writing and shall contain the following:
  - 19 (a) A statement describing the petitioner's interest in the application;
  - 20 (b) The reasons for the petitioner's opposition to or support for the application;
  - 21 and
  - 22 (c) The signature and mailing address of the petitioner or the petitioner's legal  
23 counsel;
- 24 (6) A statement telling where copies of the recommendation, application, or other

1 information may be obtained;

2 (7) The time when and the place where the application will be considered by the board;

3 (8) A statement that the recommendation of the chief engineer is not final or binding  
4 upon the board and is subject to the approval of the board after it reaches a  
5 conclusion based on facts at the public hearing;

6 (9) A statement that the time of hearing will be automatically extended for at least twenty  
7 days upon written request of the applicant or any person who has filed a petition to  
8 oppose or support the application and a statement that any such request by the  
9 applicant or person filing a petition shall be made at least ten days before the  
10 published date for hearing; and

11 (10) A statement that if the applicant does not contest the recommendation of the chief  
12 engineer and no petition to oppose the application is received, the chief engineer shall  
13 act on the application pursuant to the chief engineer's recommendation and no  
14 hearing may be held before the board, unless the chief engineer makes a finding that  
15 an application, even if uncontested, presents important issues of public policy or  
16 public interest that should be heard by the board.

17 Section 2. That § 46-2A-23 be amended to read as follows:

18 46-2A-23. Following the issuance of a recommendation to approve an application pursuant  
19 to § 46-2A-2, the chief engineer may publish, at the expense of the applicant, a notice to  
20 determine whether any person opposes the application or recommendation of the chief engineer.  
21 The notice shall be published as provided for in § 46-2A-4, and the notice shall contain the  
22 information provided for in subdivisions 46-2A-4(1), (2), (3), (5), (6), and (10). The notice is  
23 not required to refer to a board meeting or hearing date. In addition, the notice shall include a  
24 statement that if the applicant intends to contest the recommendation, the applicant shall file a

1 petition with the chief engineer, and any interested person who intends to oppose or support the  
2 application or recommendation shall file a petition with the chief engineer and the applicant.

3 Any petition shall be filed within ten days of the ~~second~~ published notice.

4 If no petition to contest the recommendation or to oppose an application is timely filed, the  
5 chief engineer, following receipt of proof of publication, shall act on the application consistent  
6 with the chief engineer's recommendation as provided by rules promulgated by the Water  
7 Management Board pursuant to chapter 1-26 delegating authority to the chief engineer to issue  
8 uncontested permits pursuant to §§ 46-1-16 and 46-2-3.1, without hearing by the board.

9 If a petition to contest the recommendation or to oppose the application is timely filed, the  
10 chief engineer shall provide notice of a board hearing pursuant to § 1-26-17. The notice shall  
11 also include a statement that the recommendation of the chief engineer is not final or binding  
12 upon the board and is subject to the decision of the board based on evidence and record of the  
13 public hearing. A statement shall also be included in the notice that the applicant or any  
14 interested person who has filed a petition to oppose or support an application, may file a written  
15 notice with the chief engineer requesting postponement of the original hearing date. The written  
16 notice requesting postponement shall be filed within twenty days of the date of the notice  
17 scheduling the board hearing, but not less than ten days before the date the application is  
18 scheduled for hearing. Upon timely receipt of a written notice, the chief engineer shall cancel  
19 the original hearing and reschedule the hearing not less than twenty days after the original  
20 hearing date. Notice of hearing shall be provided by personal service or by first class mail to the  
21 applicant and parties of record.

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

400T0158

## SENATE JUDICIARY ENGROSSED NO. **SB 10** - 2/13/2012

Introduced by: The Committee on Judiciary at the request of the Department of Game, Fish  
and Parks

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to boating while  
2 under the influence.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 42-8-45 be amended to read as follows:

5 42-8-45. No person may operate a boat as defined in subdivisions 42-8-2(2b), (3), (5a), or  
6 (6) while underway on the public waters of the state while:

7 (1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown  
8 by chemical analysis of that person's breath, blood, or other bodily substance;

9 (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or  
10 substance not obtained pursuant to a valid prescription, or any combination of an  
11 alcoholic beverage, marijuana, or such controlled drug or substance;

12 (3) Under the influence of ~~marijuana~~ or any controlled drug or substance obtained  
13 pursuant to a valid prescription, or any other substance, to a degree which renders the  
14 person incapable of safely driving or operating such boat; ~~or~~



(4) Under the combined influence of an alcoholic beverage and ~~marijuana~~ or any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving or operating such boat; or

(5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15.

Any violation of this section is a Class 1 misdemeanor.

Section 2. That § 42-8-45.1 be amended to read as follows:

42-8-45.1. A law enforcement officer may, without a warrant, arrest a person for a violation of the provisions of § 42-8-45 if ~~he~~ the officer has probable cause to believe that the person to be arrested has been involved in an accident on the public waters of the state and has violated the provisions of § 42-8-45 and that the violation occurred prior to or immediately following the accident.

Section 3. That § 42-8-45.3 be amended to read as follows:

42-8-45.3. The fact that any person charged with a violation of § 42-8-45 ~~may use~~ is or has been prescribed a drug under the laws of this state ~~does is not constitute~~ a defense against any charge of violating ~~that section~~ § 42-8-45.

Section 4. That § 42-8-45.4 be amended to read as follows:

42-8-45.4. In any criminal prosecution for a violation of § 42-8-45, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance gives rise to the following presumptions:

(1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, ~~it is presumed~~ a presumption arises that the defendant was not under the influence of ~~intoxicating liquor~~ an alcoholic beverage;

(2) If there was at that time in excess of five hundredths percent but less than eight hundredths percent by weight of alcohol in the defendant's blood, such fact does not give rise to any presumption that the defendant was or was not under the influence of ~~intoxicating liquor~~ an alcoholic beverage, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant; and

(3) If there was at that time eight hundredths percent or more by weight of alcohol in the defendant's blood, ~~it is presumed~~ a presumption arises that the defendant was under the influence of ~~intoxicating liquor~~ an alcoholic beverage.

Percent by weight of alcohol in the blood ~~shall be~~ is based upon milligrams of alcohol per 1.0 cubic ~~centimeters~~ centimeter of whole blood or 2100 cubic centimeters of deep lung breath.

Section 5. That § 42-8-45.5 be amended to read as follows:

42-8-45.5. The provisions of § 42-8-45.4 ~~may not be construed as limiting~~ do not limit the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of ~~intoxicating liquor~~ an alcoholic beverage.

Section 6. That § 42-8-45.6 be amended to read as follows:

42-8-45.6. Any person who operates a boat while underway on the public waters of the state in this state is considered to have ~~consented~~ given consent to the withdrawal of blood or other bodily substance and chemical analysis of ~~such~~ the person's blood, breath, or other bodily substance to determine the amount of alcohol in ~~such~~ the person's blood and to determine the presence of marijuana or any controlled drug or substance or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15 or any other substance that may render a person incapable of safely operating a boat. The arresting law enforcement officer may, subsequent to the arrest of any operator for a violation of § 42-8-45, require the operator to submit to the withdrawal of blood or other bodily substances as evidence.

~~—The person, operating a boat underway which has been involved in a collision or an accident resulting in bodily injury or death to any person or property damage to a boat or other property to an apparent extent of one thousand dollars or more to any one person's property or two thousand dollars or more in any one accident, shall submit to the withdrawal of blood or other bodily substance for chemical analysis or chemical analysis of the person's breath. The officer shall advise the person of the right to have an additional chemical analysis performed by a technician of his or her own choosing at his or her own expense.~~

~~—Any other person, operating a boat underway which has not been involved in a collision or an accident resulting in bodily injury or death to any person or property damage to a boat or other property to an apparent extent of one thousand dollars or more to any one person's property or two thousand dollars or more in any one accident, shall be requested by the officer to submit to the withdrawal of blood or other bodily substance for chemical analysis or chemical analysis of his or her breath. The officer shall advise the person that:~~

~~—(1)—If he or she refuses to submit to the withdrawal or chemical analysis, no withdrawal or chemical analysis may be required;~~

~~—(2)—Such refusal is admissible into evidence at trial; and~~

~~—(3)—That he or she has the right to have an additional chemical analysis performed by a technician of his or her own choosing at his or her own expense.~~

~~—If such person refuses to submit to chemical analysis of his or her blood, urine, breath, or other bodily substance, or allow the withdrawal of blood or other bodily substance for chemical analysis as provided in this section, and that person subsequently stands trial for violation of § 42-8-45, such refusal is admissible into evidence at the trial.~~

Section 7. That § 42-8-45.9 be amended to read as follows:

42-8-45.9. ~~The~~ Any person tested pursuant to this chapter ~~shall be permitted to~~ may have



1 a physician, laboratory technician, registered nurse, physician's assistant, or medical technologist  
2 of ~~his~~ the person's own choosing administer the chemical analysis in addition to the one  
3 administered at the direction of the law enforcement officer.

4 Section 8. That § 42-8-45.10 be amended to read as follows:

5 42-8-45.10. Upon the request of ~~the~~ any person who was tested pursuant to this chapter or  
6 upon the request of ~~his~~ the person's attorney, the results of such analysis shall be made available  
7 to ~~him~~ the person or to ~~his~~ the person's attorney.

8 Section 9. That § 42-8-45.7 be amended to read as follows:

9 42-8-45.7. Only a physician, laboratory technician, registered nurse, physician's assistant,  
10 phlebotomist, expanded role licensed practical nurse, medical technician, or medical  
11 technologist may withdraw blood for the purpose of determining the alcoholic content ~~therein~~  
12 of the blood. This limitation does not apply to the taking of a breath or other bodily substance  
13 specimen. Such authorized persons, acting on the presumption of consent ~~considered to have~~  
14 ~~been given by the person when operating a boat while underway in § 42-8-45.6,~~ and any hospital  
15 or facility employing such persons, are not liable and may not be held to pay damages to the  
16 party from whom the blood sample is withdrawn, if the withdrawal is administered with usual  
17 and ordinary care. No person authorized to withdraw blood under this section may be required  
18 or forced to withdraw blood for the purposes provided in this chapter, unless required pursuant  
19 to a written agreement.

# State of South Dakota

## EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

681T0420

### SENATE ENGROSSED NO. **SB 75** - 2/13/2012

**This bill has been extensively amended (hghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Kraus, Maher, Nelson (Tom), and Novstrup (Al) and  
Representatives Willadsen and Hunt

1 FOR AN ACT ENTITLED, An Act to revise the determination of fees that may be charged for  
2 certain public records.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-27-1.2 be amended to read as follows:

5 1-27-1.2. If a custodian of a public record of a county, municipality, political subdivision,  
6 or tax-supported district provides to a member of the public, upon request, a copy of the public  
7 record ~~by transmitting it from a modem to an outside modem~~, a reasonable fee may be charged  
8 for ~~such~~ any specialized service. Such fee may include a reasonable amount representing a  
9 portion of the amortization of the cost of computer equipment, including software, necessarily  
10 added in order to provide such specialized service. This section does not require a governmental  
11 entity to acquire computer capability to generate public records in a new or different form if that  
12 new form would require additional computer equipment or software not already possessed by  
13 the governmental entity.

14 No fee may be charged for the electronic transfer of any minutes of a political subdivision,



- 1 board or agency of a political subdivision, or the governing board of an agency that levies
- 2 property taxes that were recorded in the last three years.

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

921T0283

## SENATE LOCAL GOVERNMENT ENGROSSED NO. **SB 101** - 1/30/2012

Introduced by: Senators Hansen (Tom), Frerichs, Gray, Juhnke, Maher, and Novstrup (Al)  
and Representatives Kirkeby, Cronin, Fargen, Munsterman, and Street

1 FOR AN ACT ENTITLED, An Act to authorize counties to borrow money using promissory  
2 notes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 7-21 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The provisions of § 7-21-16 or any other provision of law notwithstanding, a county may  
7 borrow money from any source willing to lend the money by issuing a promissory note subject  
8 to the limitations set in sections 2 to 5, inclusive, of this Act. Notes issued pursuant to this  
9 section are payable solely from the sources provided in section 2 of this Act and do not  
10 constitute an indebtedness of the county within the meaning of any constitutional or statutory  
11 provisions or limitations. The notes shall specify the authority under which the notes are issued  
12 and shall state that the notes are issued in conformity with the provisions, restrictions, and  
13 limitations of sections 2 to 5, inclusive, of this Act and that the notes and the interest on the  
14 notes are payable from the sources specified in sections 2 to 5, inclusive, of this Act. The notes



1 shall be authorized, issued, and sold in accordance with chapter 6-8B. No election is required,  
2 and the notes may not be issued for a term in excess of five years.

3 Section 2. That chapter 7-21 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 The money borrowed pursuant to section 1 of this Act may not exceed the sum of ninety-five  
6 percent of the amount of uncollected taxes levied by the county for the current fiscal year plus  
7 other receivables of the fund, including state or federal grant moneys, that have been earned by  
8 the county or committed by the state or federal governments but not collected at the date of  
9 borrowing.

10 Section 3. That chapter 7-21 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 If any registered warrants or promissory notes are outstanding against the fund for which the  
13 money is to be borrowed, the borrowing limit specified in section 2 of this Act is reduced by the  
14 amount of the outstanding warrants or promissory notes.

15 Section 4. That chapter 7-21 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 The rate of interest for a promissory note authorized by section 1 of this Act shall be stated  
18 on the note. The note shall be signed by the chair of the board of county commissioners and by  
19 the county auditor.

20 Section 5. That chapter 7-21 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 If a note authorized by sections 1 to 4, inclusive, of this Act has been issued and not paid  
23 in full within the term provided in section 1 of this Act, no cash receipts may be expended for  
24 any purpose except the retirement of principal and interest of notes outstanding against that

1 fund, until all such notes are retired.

# State of South Dakota

## EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

156T0673

### SENATE ENGROSSED NO. **SB 169** - 2/13/2012

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Hansen (Tom), Begalka, Frerichs, Krebs, Novstrup (Al), and Peters  
and Representatives Street, Greenfield, Rozum, Sigdestad, and Tulson

1 FOR AN ACT ENTITLED, An Act to establish the Regional Watershed Advisory Task Force.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. There is hereby established the Regional Watershed Advisory Task Force. The  
4 task force shall consist of the following fourteen members:

5 (1) The speaker of the House of Representatives shall appoint four members of the  
6 House of Representatives, no more than two of whom may be from one political  
7 party;

8 (2) The speaker of the House of Representatives shall appoint three members of the  
9 general public. At least one of the members shall have a background in natural  
10 resources law, science, or management, and at least one of the members shall have  
11 an agricultural or business background;

12 (3) The president pro tempore of the Senate shall appoint four members of the Senate,  
13 no more than two of whom may be from one political party; and

14 (4) The president pro tempore of the Senate shall appoint three members of the general



1 public. At least one of the members shall have a background in natural resources law,  
2 science, or management, and at least one of the members shall have an agricultural  
3 or business background.

4 The initial appointments shall be made no later than July 1, 2012, and shall serve until  
5 January 12, 2013. The speaker of the House of Representatives and president pro tempore of the  
6 Senate, before the close of each regular session of the Legislature held in odd-numbered years,  
7 shall appoint members to the task force for a term of two years. If there is a vacancy on the task  
8 force, the vacancy shall be filled in the same manner as the original appointment.

9 Section 2. The Regional Watershed Advisory Task Force established pursuant to section 1  
10 of this Act shall conduct studies and evaluations on matters relating to drainage, erosion, flood  
11 control, reclamation, environmental protection, and improvement of lands, soils, waters, and all  
12 other authorized purposes and may advise any new or existing special purpose district or  
13 government entity on such issues. In addition, the task force shall consider potential alternative  
14 organizational structures and entities appropriate to address such issues. The task force shall  
15 report to the Senate and House of Representatives and may submit a copy of its report to the  
16 Governor. The task force may present draft legislation and policy recommendations to the  
17 Legislative Research Council Executive Board. The task force shall make recommendations in  
18 the following areas:

- 19 (1) The proper role, purposes, structure, powers, boundaries, and financing for regional  
20 and local watershed districts and the relationship of such districts to other types of  
21 water and natural resources-related special purpose districts;
- 22 (2) The role of watershed districts and other state and local government entities with  
23 respect to drainage issues, including drainage planning and management, resolution  
24 of drainage disputes, and recommendations for potential realignment of



1           responsibilities for drainage matters; and

2       (3)   Potential alternative organizational structures, entities, and strategies appropriate to  
3           address statewide, regional, and local issues relating to water and natural resources  
4           conservation, protection, management, and use.

5       Section 3. The provisions of this Act are repealed on January 20, 2015.

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

195T0631

## HOUSE STATE AFFAIRS ENGROSSED NO. **SB 174** - 2/22/2012

Introduced by: Senators Brown, Bradford, Frerichs, Hansen (Tom), Heineman, Juhnke, Olson (Russell), Peters, Putnam, Schlekeway, Tidemann, Tieszen, and Vehle and Representatives Cronin, Abdallah, Gibson, Hunhoff (Bernie), Rozum, and White

1 FOR AN ACT ENTITLED, An Act to increase the 911 emergency surcharge, to revise the  
2 collection and distribution of the surcharge revenue, to provide for point of sale collection  
3 of the prepaid wireless 911 emergency surcharge, and to provide funding for the upgrade of  
4 911 emergency services.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That § 34-45-2 be amended to read as follows:

7 34-45-2. ~~The governing body of a public corporation may by ordinance authorize a 911~~  
8 ~~emergency reporting system. The ordinance shall include a description of the proposed 911~~  
9 ~~service area. If the governing body of a public agency had adopted an ordinance authorizing a~~  
10 911 emergency reporting system which was in effect on January 1, 2012, the ordinance remains  
11 in effect for establishing such 911 service area unless amended or repealed by the public agency.  
12 Any provision in the ordinance establishing a surcharge is no longer in effect after July 1, 2012.

13 Section 2. That § 34-45-4 be amended to read as follows:



1       34-45-4. ~~Upon compliance with § 34-45-2, the governing body may assess a A~~ monthly  
2       uniform ~~charge in an amount not to exceed seventy-five~~ 911 emergency surcharge of one dollar  
3       and twenty-five cents shall be assessed per service user line. The proceeds of this ~~charge~~  
4       surcharge shall be used to pay for allowable nonrecurring and recurring costs of the 911 system.  
5       ~~Any prepaid wireless telecommunications service provider shall remit the 911 emergency~~  
6       ~~surcharge for each active prepaid wireless telecommunication service user account to the South~~  
7       ~~Dakota 911 coordination fund. The proceeds of the South Dakota 911 coordination fund are~~  
8       ~~continuously appropriated for reimbursement of allowable nonrecurring and recurring costs of~~  
9       ~~911 service and operating expenses of the board. No such charge~~ No 911 emergency surcharge  
10      may be imposed upon more than one hundred service user lines or equivalent service, per  
11      customer account billed, per month. In the case of multi-station network systems, service user  
12      lines shall be equal to the number of calls that can simultaneously be made from such system  
13      to the public switched telephone network. No prepaid wireless telecommunications service is  
14      subject to the surcharge imposed under this section.

15      Section 3. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as  
16      follows:

17      There is hereby imposed a prepaid wireless 911 emergency surcharge of two percent upon  
18      the gross receipts of each retail transaction for the purchase of prepaid wireless  
19      telecommunications service. The prepaid wireless surcharge shall be collected by the prepaid  
20      wireless service seller from the prepaid wireless service consumer during each retail transaction.  
21      For purposes of this section, the term, retail transaction, means when the purchase of a prepaid  
22      wireless telecommunications service is made in this state or has been determined to be a sale  
23      occurring in this state pursuant to § 10-45-108. The amount of the prepaid wireless surcharge  
24      shall be separately stated on an invoice, receipt, or other similar document that is provided to

1 the prepaid wireless service consumer by the prepaid wireless service seller. The service  
2 consumer is liable to pay the prepaid wireless surcharge imposed by this section. The prepaid  
3 wireless service seller is liable to collect and remit all prepaid wireless surcharges imposed by  
4 this section. The prepaid wireless service seller is not liable for any prepaid wireless surcharge  
5 imposed by this section if the prepaid wireless service seller is unable to collect the surcharge  
6 from the service consumer.

7 If the amount of the prepaid wireless surcharge that is imposed by this section is separately  
8 stated on an invoice, receipt, or other similar document provided to the prepaid wireless service  
9 consumer, the prepaid wireless surcharge may not be included in the base for measuring any  
10 other tax, fee, surcharge, or other charge that is imposed by this state or its political  
11 subdivisions. If the prepaid wireless telecommunications service is sold with one or more other  
12 products or services for a single, non-itemized price, the prepaid wireless surcharge imposed  
13 by this section shall apply to the entire non-itemized price unless the prepaid wireless service  
14 seller elects to apply the surcharge to:

- 15 (1) The amount of the prepaid wireless telecommunications service that is disclosed to  
16 the prepaid wireless service consumer as a dollar amount including the surcharge  
17 imposed by this section; or
- 18 (2) The prepaid wireless service seller identifies the portion of the price that is  
19 attributable to the prepaid wireless telecommunications service by reasonable and  
20 verifiable standards from its books and records that are kept in the regular course of  
21 business.

22 However, if the amount of prepaid wireless telecommunications service sold for a single,  
23 non-itemized price with one or more other products or services is denominated as ten minutes  
24 or less or as five dollars or less, the prepaid wireless service seller may elect not to collect any

1 prepaid wireless surcharge for such retail transaction.

2 Section 4. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 Any entity required to collect and remit the surcharge imposed pursuant to § 34-45-4 or  
5 section 3 of this Act shall register with the Department of Revenue. There is no registration fee.  
6 A registration shall be made upon a form prescribed by the secretary of the Department of  
7 Revenue and shall set forth the name under which the applicant transacts or intends to transact  
8 business, the location of the place of business, and such other information as the secretary may  
9 require.

10 The department shall issue an identification number to each applicant. This identification  
11 number is not assignable and is valid only for the entity to which it was issued. The  
12 identification number is valid until canceled or revoked.

13 Section 5. That § 34-45-5 be amended to read as follows:

14 34-45-5. Any service user in the state is liable for the applicable 911 emergency surcharge  
15 pursuant to § 34-45-4. Any telecommunications service provider, wireless telecommunications  
16 service provider, or Interconnected Voice over Internet Protocol service provider shall collect  
17 and remit to the ~~governing body~~ Department of Revenue the applicable 911 emergency  
18 surcharge which shall be stated separately in any billing statement, invoice, or receipt. ~~All~~  
19 ~~prepaid wireless telecommunications service providers shall remit the applicable 911 emergency~~  
20 ~~surcharge for each active prepaid wireless telecommunication service user account in the state~~  
21 ~~to the South Dakota 911 coordination fund. The prepaid wireless telecommunications service~~  
22 ~~provider may seek reimbursement from their service user through whatever means are available~~  
23 ~~to the provider.~~

24 Section 6. That § 34-45-6.1 be repealed.

~~34-45-6.1. Notwithstanding any provision of this chapter, no retailer purchasing prepaid wireless telecommunication services or devices for resale is required to collect or remit any 911 emergency surcharge.~~

Section 7. That § 34-45-7 be amended to read as follows:

34-45-7. Each telecommunications service provider, wireless telecommunications service provider, prepaid wireless telecommunications service provider, or Interconnected Voice over Internet Protocol service provider ~~has no obligation to take any legal action to enforce the collection of any charge imposed pursuant to this chapter. Such action may be brought by or on behalf of the public agency imposing the charge. Each telecommunications service provider, wireless telecommunications service provider, prepaid wireless telecommunications service provider, or Interconnected Voice over Internet Protocol service provider is not liable for such uncollected amounts~~ is liable to collect and remit the 911 emergency surcharges imposed by § 34-45-4. The service user is liable for paying the 911 emergency surcharge imposed by § 34-45-4. The service provider is not liable for any 911 emergency surcharge if the service provider is unable to collect the surcharge from the service user.

Section 8. That § 34-45-8 be repealed.

~~34-45-8. Any charge imposed pursuant to § 34-45-4 and the amounts collected for telecommunications service, wireless telecommunications service, or Interconnected Voice over Internet Protocol service shall be remitted to the governing body and the amounts collected for prepaid wireless telecommunications service shall be remitted to the South Dakota 911 coordination fund not more than thirty days after the close of the calendar quarter which shall include a return to be in such form as required by the board together with the remittance of the amount of the charge payable. Each service provider shall maintain a record of collections made for a period of one year after the collection.~~

1       Section 9. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       Any entity who is registered pursuant to this chapter or any entity required to collect and  
4 remit the surcharges imposed by § 34-45-4 or section 3 of this Act shall file returns or reports  
5 by electronic means on a monthly basis with the Department of Revenue and shall remit the  
6 surcharges by electronic transfer on a monthly basis to the department unless the secretary of  
7 the Department of Revenue permits an entity to file returns or reports by nonelectronic means  
8 and permits an entity to remit surcharges by nonelectronic means. If an entity does not have  
9 internet access on the business premises, the secretary of revenue shall permit an entity to file  
10 returns or reports by nonelectronic means and permit an entity to remit surcharges by  
11 nonelectronic means.

12       Section 10. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14       This section applies to any return, report, or remittance filed pursuant to section 9 of this  
15 Act. For any return or report that is required to be filed by electronic means, the return or report  
16 shall be filed by electronic means on or before the twenty-third day of the month following each  
17 period. If the twenty-third day of the month falls on a Saturday, Sunday, legal holiday  
18 enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed, the return or report is due  
19 on the next succeeding day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1,  
20 or a day the Federal Reserve Bank is closed.

21       For any surcharge that is required to be remitted by electronic transfer, the surcharge shall  
22 be remitted on or before the second to the last day of the month following each period. For the  
23 purpose of remitting any surcharge by electronic transfer pursuant to this section, the last day  
24 and the second to the last day of the month means the last day and the second to the last day of

1 the month which are not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the  
2 Federal Reserve Bank is closed.

3 If the secretary of the Department of Revenue permits any entity to file returns or reports by  
4 nonelectronic means, permits any entity to remit surcharges by nonelectronic means, or both,  
5 pursuant to section 9 of this Act, any return, report, or remittance which is required to be filed  
6 pursuant to 9 of this Act is timely filed if mailed, postage prepaid on or before the twentieth day  
7 of the month following each period, and is received by the department. A United States Postal  
8 Service postmark is evidence of the date of mailing for the purpose of timely filing of returns,  
9 reports, or remittances.

10 Penalty or interest under § 10-59-6 shall be paid if a return or remittance is not made on  
11 time.

12 Section 11. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 The Department of Revenue shall transfer the surcharges collected pursuant to § 34-45-4  
15 and section 3 of this Act to the Department of Public Safety. The Department of Public Safety  
16 shall remit each month seventy percent of the revenue collected from the 911 emergency  
17 surcharges imposed by § 34-45-4 to the public agency, which has adopted an ordinance pursuant  
18 to § 34-45-2, where the surcharges were collected. The secretary of the Department of Public  
19 Safety shall approve vouchers and the state auditor shall draw warrants to pay each public  
20 agency its share of the distribution. The Department of Public Safety shall deposit thirty percent  
21 of the revenue collected from the 911 emergency surcharges imposed by § 34-45-4 into the  
22 public safety 911 emergency fund created pursuant to section 12 of this Act. The Department  
23 of Public Safety shall deposit all of the revenue collected from the prepaid wireless service  
24 surcharge imposed by section 3 of this Act into the South Dakota 911 coordination fund created



1 pursuant to § 34-45-12.

2 Section 12. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 There is hereby created within the state treasury the public safety 911 emergency fund. Any  
5 money in the public safety 911 emergency fund is continuously appropriated for distribution as  
6 provided in this section. A public safety answering point is eligible to receive a distribution from  
7 the public safety 911 emergency fund if the public safety answering point is in compliance with  
8 the standards for operation and utilization of public safety answering points as determined by  
9 the board and either serves a population of more than thirty thousand or covers an area that  
10 includes three or more counties. The board shall notify each public safety answering point when  
11 the list of public safety answering points eligible for funding pursuant to this section changes.

12 The Department of Public Safety shall:

- 13 (1) Distribute twenty-six percent of the money deposited in the fund based on the ratio  
14 of the population of each eligible public safety answering point to the population of  
15 all the eligible public safety answering points; and  
16 (2) Transfer seventy-four percent of the money deposited in the fund to the South Dakota  
17 911 coordination fund.

18 The Department of Public Safety shall base the allocation of money for population on the  
19 most recent decennial census of the United States Department of Commerce, Bureau of the  
20 Census and the population estimate published by the United States Census Bureau for each year  
21 ending in five. The Department of Public Safety shall make distributions from the public safety  
22 911 emergency fund each quarter. The secretary of the Department of Public Safety shall  
23 approve vouchers and the state auditor shall draw warrants to pay each public safety answering  
24 point its share of the distribution.

Section 13. That § 34-45-9 be amended to read as follows:

34-45-9. The service provider and prepaid wireless service seller may deduct and retain ~~one~~ two percent of the collected amount or twenty-five dollars, whichever amount is greater, each month as the cost of administration for collecting the ~~charge~~ surcharge imposed by § 34-45-4 and section 3 of this Act.

Section 14. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as follows:

The prepaid wireless service seller may retain all the surcharges imposed by section 3 of this Act during the first three months this surcharge is effective. However, the prepaid wireless service seller shall report the collections retained during this month to the Department of Revenue.

Section 15. That § 34-45-10 be repealed.

~~34-45-10. At least once every calendar year, prior to September first, the governing body shall review the current charge and establish a rate of charge to be effective on the next January first, not to exceed the amount authorized, that together with any surplus revenues carried forward will produce sufficient revenues to fund the expenditures authorized by §§ 34-45-3 and 34-45-4. Any amount collected in excess of expenses within a given year shall be carried forward to the next year. Immediately upon making the determination and fixing the rate, the governing body shall publish its new rate, and it shall notify by registered mail every service provider at least ninety days before the new rate becomes effective. The board or governing body may, at its own expense, require an annual audit of a service provider's books and records concerning the collection and remittance of the charge authorized by §§ 34-45-3 and 34-45-4.~~

Section 16. That § 34-45-12 be amended to read as follows:

34-45-12. There is hereby created within the state treasury the South Dakota 911

1 coordination fund. Any funds collected from prepaid wireless telecommunications service  
2 pursuant to ~~§ 34-45-4~~ section 3 of this Act shall be deposited in the South Dakota 911  
3 coordination fund. Any money in the South Dakota 911 coordination fund is continuously  
4 appropriated for reimbursement of allowable nonrecurring and recurring costs of 911 service  
5 and operating expenses of the board. The board shall authorize disbursements from the fund  
6 pursuant to this chapter for the expenses of the board and for approved nonrecurring and  
7 recurring costs requested by the governing body of eligible 911 public safety answering points.  
8 The board may solicit proposals to coordinate and implement an upgrade to the 911 emergency  
9 service system of all public safety answering points. The funds may be disbursed for the purpose  
10 of planning, coordinating, purchasing, installing, maintaining, and operating, an upgrade to the  
11 911 emergency services system. Any interest earned on money in the fund shall be credited to  
12 the fund.

13 Section 17. That § 34-45-17 be amended to read as follows:

14 34-45-17. The 911 emergency reporting system provided by this chapter is within the  
15 governmental powers and authority of the governing body or public agency. In contracting for  
16 the 911 emergency reporting system or the provisioning of the 911 service, except for willful  
17 or wanton negligence or intentional acts, the board, the governing body, the public agency, the  
18 service provider, the prepaid wireless service provider, the prepaid wireless service seller, and  
19 the service supplier, their employees and agents, are immune from liability for a failure in the  
20 use or operation of the 911 system. The immunity provided by this section does not extend to  
21 the installation or maintenance of the 911 system.

22 Section 18. That § 34-45-18.2 be amended to read as follows:

23 34-45-18.2. The board may promulgate rules pursuant to chapter 1-26 setting:

24 (1) Minimum technical, operational, and procedural standards for the operation and

utilization of a public safety answering point;

(2) Requirements and amounts for reimbursement of recurring and nonrecurring costs;

(3) Standards for coordination of effective 911 service on a statewide basis; and

(4) Allowable expenditures of the 911 emergency surcharge proceeds collected pursuant to § 34-45-4.

~~A public safety answering point shall comply with ARSD 50:02:04:02(2) if the Legislature increases the monthly uniform charge, regardless of the amount of the increase. Furthermore, no public safety answering point may be required to comply with the provisions of ARSD 50:02:04:02(2) if the public safety answering point forswears the acceptance of revenue from any future legislative increase in the monthly uniform charge and formally resolves to continue to maintain itself pursuant to all other statutes, rules, and standards~~ No public safety answering point may be required to comply with the provisions of ARSD 50:02:04:02(2), unless the next generation 911 initiative has been implemented. The board shall determine when the next generation 911 initiative is operational. The board shall notify each public safety answering point not complying with the provisions of this rule when this determination has been made. The public safety answering point shall comply with the provisions of the rule within ninety days. However, any public safety answering point that submits a written request to the board to opt out of the provisions of ARSD 50:02:04:02(2) may only receive seventy-five cents of each surcharge assessed pursuant to § 34-45-4 that is to be remitted such public safety answering point. The remaining surcharge assessment shall be deposited in the public safety 911 emergency fund.

Section 19. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as follows:

Any service provider collecting and remitting the surcharge imposed by § 34-45-4 or prepaid

wireless service seller collecting and remitting the surcharge imposed by section 3 of this Act shall keep records of all receipts and telecommunications service sales. The records are, at all times during business hours of the day, subject to inspection by the Department of Revenue to determine the amount of surcharge due. The records shall be preserved for a period of three years unless the secretary of the Department of Revenue, in writing, authorized their destruction or disposal at an earlier date.

Section 20. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as follows:

The secretary of the Department of Revenue may promulgate rules, pursuant to chapter 1-26, concerning:

- (1) The filing of returns and payment of the surcharges imposed by this chapter;
- (2) Determining the application of the surcharges imposed by this chapter;
- (3) Record-keeping requirements; and
- (4) Determining auditing methods.

Section 21. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as follows:

Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the surcharge imposed by § 34-45-4 or section 3 of this Act is guilty of a Class 1 misdemeanor;
- (2) Fails to pay the surcharge collected pursuant to the provisions of this chapter within sixty days from the date the surcharge becomes due is guilty of a Class 2 misdemeanor;
- (3) Fails to keep the records required by this chapter or refuses to exhibit these records to the Department of Revenue for the purpose of examination is guilty of a Class 2

1           misdemeanor;

2       (4)   Fails to file a return required by this chapter within sixty days from the date the return  
3           is due is guilty of a Class 2 misdemeanor;

4       (5)   Willfully violates any rule of the secretary for the administration and enforcement of  
5           the provisions of this chapter is guilty of a Class 2 misdemeanor; or

6       (6)   Fails to submit a 911 emergency surcharge registration after having been notified in  
7           writing by the secretary of the Department of Revenue that the person is subject to  
8           the provisions of this chapter is guilty of a Class 2 misdemeanor. However, it is not  
9           a violation of this subdivision if the person submits a registration and meets all  
10          lawful prerequisites for registering within ten days from receipt of written notice  
11          from the secretary.

12       For purposes of this section, the term, person, includes corporate officers, member-managers  
13       or managers of limited liability companies, or partners that control, supervise, or are charged  
14       with the responsibility of filing the returns or remitting the payments pursuant to this chapter.

15       Section 22. That § 34-45-1 be amended to read as follows:

16       34-45-1. Terms used in this chapter mean:

17       (1)   ~~"Active prepaid wireless telecommunication service user account," a prepaid wireless~~  
18           ~~service account;~~

19       ~~———— (a) ——— Which has a sufficient positive balance as of the last day of any month and is~~  
20           ~~issued to a person who resides in a zip code, or purchases the service, within~~  
21           ~~the state;~~

22       ~~———— (b) ——— As estimated by dividing the total earned prepaid wireless telecommunications~~  
23           ~~service revenue received by the service provider within the monthly reporting~~  
24           ~~period by the industry's annually calculated average revenue per user as cited~~

1 in the FCC's Annual Report and Analysis of Competitive Market Conditions  
2 With Respect to Commercial Mobile Services as required under 47 U.S.C.  
3 § 332(c)(1)(C); or

4 ~~\_\_\_\_\_ (c) Which is a retail sale by a prepaid wireless telecommunications service~~  
5 ~~provider to a service user in the state;~~

6 ~~—(2)~~ "Basic 911," any service which provides the user of a calling device, which utilizes  
7 any communications technology, the ability to reach a public safety answering point  
8 to report police, fire, medical, or other emergency situations by dialing 911;

9 ~~(3)~~(2) "Board," the South Dakota 911 Coordination Board created pursuant to § 34-45-18;

10 ~~(4)~~(3) "Enhanced 911," any system which provides the user of a calling device, which  
11 utilizes any communications technology, the ability to reach a public safety  
12 answering point by dialing the digits 911, and which routes that call to the  
13 appropriate public safety answer point and which automatically provides information  
14 about the service user to a 911 dispatcher including the user's name, location, call  
15 back number, and assigned emergency responders;

16 ~~(5)~~(4) "Governing body," the board of county commissioners of a county or the ~~city council~~  
17 ~~or other governing body of a county or municipality or the board of directors of a~~  
18 ~~special district;~~

19 ~~(6)~~(5) "Interconnected Voice-over Internet Protocol (VoIP) service," any service with the  
20 following characteristics:

- 21 (a) Enables real-time two-way voice communication;
- 22 (b) Requires a broadband connection from the user's location;
- 23 (c) Requires internet protocol-compatible customer premise equipment; and
- 24 (d) Permits users generally to receive calls that originate and terminate on the

1 public switched telephone network;

2 ~~(7)(6)~~ "911 emergency reporting system" or "911 system," any telecommunications service  
3 system consisting of network, database, and on-premises equipment which utilizes  
4 the single three-digit number 911 for reporting police, fire, medical, or other  
5 emergency situation;

6 ~~(8)(7)~~ "911 emergency surcharge," any charge set by ~~the governing body~~ this chapter and  
7 assessed on any service user of any telecommunications service, wireless  
8 telecommunications service, or Interconnected Voice over Internet Protocol service,  
9 ~~or wireless prepaid telecommunications service~~ which physically terminates or  
10 originates within the governing body's designated 911 service area. The 911  
11 emergency surcharge shall be assessed and remitted for Interconnected Voice over  
12 Internet Protocol and wireless telecommunications service based upon the service  
13 user's place of primary use. Notwithstanding any other provision of this chapter and  
14 for purposes of the surcharge imposed by this chapter, the surcharge imposed upon  
15 wireless telecommunication services shall be administered in accordance with 4  
16 U.S.C. §§ 116-126. ~~For prepaid wireless telecommunications services, the term, 911~~  
17 ~~emergency surcharge, means any charge set and assessed for service provided to an~~  
18 ~~active prepaid wireless telecommunications service user account within the state~~  
19 ~~provided, however, that with respect to an active prepaid wireless~~  
20 ~~telecommunications service user account under subsection 34-45-1(1)(c), the~~  
21 ~~surcharge shall be two percent of the retail purchase price of such service;~~

22 ~~(9)(8)~~ "Nonrecurring costs," any capital or start-up expenditure such as telecommunications  
23 equipment, software, database, initial training, and the purchase or lease of subscriber  
24 names, addresses, and telephone information;



1     ~~(10)~~(9)     "Place of primary use," the street address where the customer's use of the  
2                   communications service primarily occurs or the customer's registered location  
3                   on the date the customer is billed;

4     ~~(11)~~(10)     "Prepaid wireless service consumer," any person who purchases prepaid  
5                   wireless telecommunications service in a retail transaction;

6     (11)   "Prepaid wireless service provider," any person that provides prepaid wireless  
7                   telecommunications service pursuant to a license issued by the Federal  
8                   Communications Commission;

9     (12)   "Prepaid wireless service seller," any person who sells prepaid wireless  
10                  telecommunications service to prepaid wireless service consumer;

11    (13)   ~~"Prepaid wireless telecommunications service," any wireless telecommunications~~  
12                  ~~service that is activated in advance by payment for a finite dollar amount of service~~  
13                  ~~or for a finite number of minutes that terminate either upon use by any person or~~  
14                  ~~within a certain period of time following the initial purchase or activation, unless an~~  
15                  ~~additional payment is made~~ any telecommunications service that provides the right  
16                  to utilize a mobile wireless service as well as other nontelecommunications services,  
17                  including the download of digital products delivered electronically, content and  
18                  ancillary services, which are paid for in advance and sold in predetermined units or  
19                  dollars which decline with use in a known amount;

20    ~~(12)~~(14)    ~~"Public agency," any municipality, county, public district, or public authority~~  
21                  ~~located in whole or in part within this state which provides or has the authority~~  
22                  ~~to provide fire fighting, law enforcement, ambulance, emergency medical, or~~  
23                  ~~other emergency services~~ county or municipality that has adopted an ordinance  
24                  pursuant to § 34-45-2;

1        ~~(13)~~(15)        "Public safety answering point," any twenty-four hour communications facility  
2                        which receives all 911 service calls and reroutes the requestor or information  
3                        to appropriate public or private safety agencies;

4        ~~(14)~~(16)        "Recurring costs," any costs such as network access fee and other telephone  
5                        charges, software, equipment, database management, maintenance, charges to  
6                        maintain database of subscriber names, addresses, and telephone information  
7                        from the local exchange access company. Recurring costs may include  
8                        personnel expenses for a public safety answering point;

9        ~~(15)~~(17)        "Registered location," the most recent information obtained by an  
10                        Interconnected Voice over Internet Protocol service provider that identifies the  
11                        physical location of an end user;

12       ~~(16)~~(18)        "Service provider," any person or entity providing, offering to provide, or  
13                        selling telecommunications service, wireless telecommunications service,  
14                        ~~prepaid wireless telecommunications service,~~ or Interconnected Voice over  
15                        Internet Protocol service;

16       ~~(17)~~(19)        "Service supplier," any person or entity who provides or offers to provide 911  
17                        system equipment, installation, maintenance, or exchange access services  
18                        within the 911 service access area;

19       ~~(18)~~(20)        "Service user," any person who purchases telecommunications service,  
20                        wireless telecommunications service, ~~prepaid wireless telecommunications~~  
21                        ~~service,~~ or Interconnected Voice over Internet Protocol service in this state  
22                        without intent for resale;

23       ~~(19)~~(21)        "Service user line," the means by which a service user may place a call to a  
24                        public safety answering point through the use of a telecommunications service,

wireless telecommunications service, ~~prepaid wireless telecommunications service~~, or Interconnected Voice over Internet Protocol service. In the case of multi-station network systems, service user lines shall be equal to the number of calls that can simultaneously be made from such system to the public switched telephone network;

~~(20)~~(22) "Telecommunications service," the transmission of signs, signals, writings, images, sounds, messages, data, or other information of any nature by wire, radio, lightwave, electromagnetic means, or other similar means. The term does not include the provision of terminal equipment used to originate or terminate such service, broadcast transmissions by radio, television, and satellite stations regulated by the Federal Communications Commission and one-way cable television service;

~~(21)~~(23) "Wireless telecommunications service," commercial mobile radio service, as such term is defined in 47 C.F.R. 203 as of January 1, 2008.

Section 23. That § 34-45-20 be amended to read as follows:

34-45-20. The board shall:

- (1) Evaluate all of the current public safety answering points and systems throughout the State of South Dakota for their capability to adequately and efficiently administer systems;
- (2) Develop plans for the implementation for a uniform statewide 911 system covering the entire state or so much as is practicable;
- (3) Monitor the number and location of public safety answering points or systems and the use of 911 emergency surcharge funds in their administrative and operational budgets;

- 1       (4)    Develop criteria and minimum standards for operating and financing public safety  
2            answering points or systems;
- 3       (5)    Develop criteria for the eligibility and amount of reimbursement of recurring and  
4            nonrecurring costs of public safety answering points or systems;
- 5       (6)    Develop criteria for the implementation of performance audits of the use of the 911  
6            fees utilized in the operation of the 911 system. The audit shall be conducted by the  
7            Department of Legislative Audit and shall be presented to the board and the  
8            Legislature; ~~and~~
- 9       (7)    Report annually to the Government Operations and Audit Committee about the  
10           operations and findings of the board and any recommendations for changes in the  
11           surcharges imposed by this chapter and the distribution of the revenue; and
- 12       (8)    Report annually to the Governor and the Legislature about the operations and  
13            findings of the board and any recommendations for changes to 911 service in the  
14            state.

15       Section 24. That § 34-45-4 be amended to read as follows:

16       34-45-4. ~~Upon compliance with § 34-45-2, the governing body may assess a~~ A monthly  
17       uniform charge in an amount not to exceed seventy-five cents 911 emergency surcharge of one  
18       dollar shall be assessed per service user line. The proceeds of this ~~charge~~ surcharge shall be used  
19       to pay for allowable nonrecurring and recurring costs of the 911 system. ~~Any prepaid wireless~~  
20       ~~telecommunications service provider shall remit the 911 emergency surcharge for each active~~  
21       ~~prepaid wireless telecommunication service user account to the South Dakota 911 coordination~~  
22       ~~fund. The proceeds of the South Dakota 911 coordination fund are continuously appropriated~~  
23       ~~for reimbursement of allowable nonrecurring and recurring costs of 911 service and operating~~  
24       ~~expenses of the board. No such charge~~ No 911 emergency surcharge may be imposed upon more

1 than one hundred service user lines or equivalent service, per customer account billed, per  
2 month. In the case of multi-station network systems, service user lines shall be equal to the  
3 number of calls that can simultaneously be made from such system to the public switched  
4 telephone network. No prepaid wireless telecommunications service is subject to the surcharge  
5 imposed under this section.

6 Section 25. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 The Department of Revenue shall transfer the surcharges collected pursuant to § 34-45-4  
9 and section 3 of this Act to the Department of Public Safety. The Department of Public Safety  
10 shall remit each month eighty-five percent of the revenue collected from the 911 emergency  
11 surcharges imposed by § 34-45-4 to the public agency, which has adopted an ordinance pursuant  
12 to § 34-45-2, where the surcharges were collected. The secretary of the Department of Public  
13 Safety shall approve vouchers and the state auditor shall draw warrants to pay each public  
14 agency its share of the distribution. The Department of Public Safety shall deposit fifteen  
15 percent of the revenue collected from the 911 emergency surcharges imposed by § 34-45-4 into  
16 the public safety 911 emergency fund created pursuant to section 12 of this Act. The Department  
17 of Public Safety shall deposit all of the revenue collected from the prepaid wireless service  
18 surcharge imposed by section 3 of this Act into the South Dakota 911 coordination fund created  
19 pursuant to § 34-45-12.

20 Section 26. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 There is hereby created within the state treasury the public safety 911 emergency fund. Any  
23 money in the public safety 911 emergency fund is continuously appropriated for distribution as  
24 provided in this section. A public safety answering point is eligible to receive a distribution from

1 the public safety 911 emergency fund if the public safety answering point is in compliance with  
2 the standards for operation and utilization of public safety answering points as determined by  
3 the board and either has a population of more than thirty thousand or covers an area that  
4 includes three or more counties. The board shall notify each public safety answering point when  
5 the list of public safety answering points eligible for funding pursuant to this section changes.  
6 The Department of Public Safety shall distribute the money deposited in the fund based on the  
7 ratio of the population of each eligible public safety answering point to the population of all the  
8 eligible public safety answering points.

9 The Department of Public Safety shall base the allocation of money for population on the  
10 most recent decennial census of the United States Department of Commerce, Bureau of the  
11 Census and the population estimate published by the United States Census Bureau for each year  
12 ending in five. The Department of Public Safety shall make distributions from the public safety  
13 911 emergency fund each quarter. The secretary of the Department of Public Safety shall  
14 approve vouchers and the state auditor shall draw warrants to pay each public safety answering  
15 point its share of the distribution.

16 Section 27. That § 10-59-1 be amended to read as follows:

17 10-59-1. The provisions of this chapter may only apply to proceedings commenced under  
18 this chapter concerning the taxes, the fees, the surcharges, or the persons subject to the taxes ~~or~~,  
19 fees, or surcharges imposed by, or any civil or criminal investigation authorized by, chapters 10-  
20 33A, 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-46C, 10-46E,  
21 10-47B, 10-52, 10-52A, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, 34-45, and 34A-13 and  
22 §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

23 Section 28. Sections 24 to 26, inclusive, are effective on July 1, 2018.

24 Section 29. Sections 11 and 12 are repealed on July 1, 2018.

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

723T0723

SENATE STATE AFFAIRS

ENGROSSED NO. **SB 188** - 2/13/2012

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senator Olson (Russell) and Representative Lust

1 FOR AN ACT ENTITLED, An Act to authorize the establishment, operation, and control of  
2 research parks on lands controlled by the Board of Regents.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Legislature finds that to increase research and technology-related economic  
5 activity in South Dakota and to expand the opportunities for South Dakota faculty members,  
6 researchers, and students to participate in the application of research results and technological  
7 innovations in commerce, government, or public service, it is critically important to encourage  
8 research opportunities and programs within the regental system. To these ends, the Legislature  
9 intends that this Act be construed as authorizing and encouraging coordinated public and private  
10 investments in facilities situated on lands controlled by the Board of Regents and designed to  
11 support commercial application of research results and technological innovations.

12 Section 2. Terms as used in this Act mean:

13 (1) "Private party lessee or contractor," a business, a nonprofit corporation, or a research  
14 park corporation authorized by lease, contract, or agreement with the Board of



1 Regents to construct, finance, operate, maintain, reconstruct, remodel, and manage,  
2 at its expense and risk, any research park established pursuant to this Act;

3 (2) "Research," an investigation aimed at the discovery of new knowledge to create a  
4 new product or service, a new process or technique, or to bring about a significant  
5 improvement in an existing product or process;

6 (3) "Research park," a planned real estate development designed to promote the practical  
7 application of university research, to aid the transfer of knowledge, technology, and  
8 business skills through collaboration between universities and industry, government,  
9 or other organizations that apply research or technology, and to assist in the growth  
10 of research-based and technology-led economic development for the community,  
11 region, and state, by bringing together universities, institutes, laboratories,  
12 businesses, and governmental and other organizations devoted to testing, research,  
13 and development activities, to the commercial, governmental, or public policy  
14 application of research results or technological innovation, or to the management of  
15 research or technology-based enterprises, agencies, or organizations. The term  
16 includes such enterprises as may be necessary to support the activities of the primary  
17 tenants, their staff, or visitors; and

18 (4) "Research park corporation," any nonprofit corporation formed pursuant to this Act  
19 and Title 47 for the purpose of constructing, financing, developing, maintaining, and  
20 operating a research park.

21 Section 3. The Board of Regents may utilize state lands under its control for the  
22 construction, development, maintenance, and operation of research parks.

23 Section 4. A research park authorized by this Act may accommodate all kinds of facilities,  
24 laboratories, businesses, or organizations usually found at research parks affiliated with



universities.

Section 5. If any lands used for purposes of a research park are determined to be subject to the school and public lands trust established pursuant to S.D. Const., Art. VIII, § 7, then:

(1) A civil, state, religious, or public organization seeking to develop and to operate a research park may make application to the commissioner of school and public lands for conveyance pursuant to § 5-9-34. If the Board of Regents agrees to transfer possession of the land, the commissioner may convey defeasible title as provided in § 5-9-35 for the purpose of operating a research park. Upon any reversion, the land shall once again be placed under the control of the Board of Regents as part of the campus from which it was originally severed; or

(2) The Board of Regents may select other lands under its control of equal value, as determined by the commissioner of school and public lands, and exchange such other lands for those comprising the research park in order to maintain the principal of the school and public lands trust.

Section 6. Any mineral rights to state lands on which a research park has been established shall be administered to support research park operations.

Section 7. Notwithstanding any other provision of law, including chapter 5-7, the Board of Regents when approving a research park lease or sublease may lease such portions of the mineral interests reserved to the State of South Dakota in the lands occupied by the research park as may be necessary to permit the research park and its tenants to use geothermal resources for heating or cooling on-site facilities. The mineral interests may be leased on behalf of the State of South Dakota acting by and through the Board of Regents in a manner and upon terms acceptable to the board.

Section 8. The commissioner of school and public lands may not authorize the lease of

1 mineral rights if exploitation of such rights would disturb the use of the research park, nor  
2 authorize construction of dams, canals, water ditches, or laterals if such structures would impair  
3 the use of the research park.

4 Section 9. The Board of Regents may enter into any lease, contract, or agreement with a  
5 business, a nonprofit corporation, or a research park corporation to permit that entity, at its  
6 expense and risk, to construct, finance, maintain, and operate any research park established  
7 pursuant to this Act.

8 Section 10. No lease, contract, or agreement may be construed to authorize the private party  
9 lessee or contractor, or any subtenant, creditor, trustee, receiver, lien holder, heir, assignee, or  
10 other party claiming an interest or right through such private party lessee or contractor, to use  
11 or to permit the use of the research park for purposes other than those specified in this Act.

12 Section 11. The lease, contract, or agreement may permit the private party lessee or  
13 contractor, or other parties claiming an interest or right through them, to pledge for  
14 commercially reasonable periods of time such rights of use or occupancy as may be possessed  
15 in order to obtain financing. However, no such pledge impairs the reversionary interests of the  
16 Board of Regents.

17 Section 12. No lease granted pursuant to this Act may have a duration exceeding ninety-nine  
18 years.

19 Section 13. Each lease, contract, or agreement shall contain provisions that require  
20 commercially reasonable performance by the private lessee or contractor. Each lease, contract,  
21 or agreement shall contain provisions that reserve to the Board of Regents the power to enforce  
22 the requirements of this Act and of any leases, contracts, or agreements issued pursuant to it,  
23 which reserved powers shall include the power of termination.

24 Section 14. Notwithstanding any other provision of law to the contrary, upon termination

1 of any such lease, contract, or agreement, the Board of Regents may take title to all  
2 improvements comprising the research park.

3 Section 15. Nothing in this Act authorizes the Board of Regents or any entity operating a  
4 research park under a lease, contract, or agreement with the Board of Regents to contract a debt  
5 on behalf of, or in any way to obligate, the State of South Dakota, or to pledge, assign, or  
6 encumber in any way, or to permit the pledging, assigning, or encumbering in any way, of  
7 appropriations made by the Legislature of the State of South Dakota. No debt or liability of a  
8 research park is an indebtedness, legal or moral, of the State of South Dakota, and no creditor  
9 may have recourse against the State of South Dakota or any fund created or maintained directly  
10 or indirectly from state taxation.

11 Section 16. The Board of Regents may form one or more research park corporations,  
12 separate and apart from the state, to construct, finance, develop, maintain, and operate research  
13 parks or economic development initiatives that support the teaching, research, or service mission  
14 of the university system by expanding opportunities for South Dakota faculty members,  
15 researchers, and students to participate in the application of research results and technological  
16 innovations in commerce, government, or public service.

17 Section 17. Each research park corporation formed pursuant to section 16 of this Act shall  
18 be governed by, and all of the corporation's functions, powers, and duties shall be exercised by,  
19 a board appointed by the Board of Regents. Each research park corporation shall have the Board  
20 of Regents as its sole member. Members of the board may include university presidents, regents,  
21 university officers or employees, and other persons selected by the Board of Regents.

22 Section 18. No portion of the net earnings realized by any research park corporation formed  
23 pursuant to section 16 of this Act may inure to any director or officer of the corporation or to  
24 any private entity or individual.

1       Section 19. No research park corporation formed pursuant to section 16 of this Act may be  
2       deemed an agency, public body, or other political subdivision of South Dakota, and no research  
3       park corporation formed pursuant to section 16 of this Act may borrow money secured by the  
4       State of South Dakota.

5       Section 20. No research park corporation formed pursuant to section 16 of this Act is subject  
6       to statutes or rules regulating the conduct of public bodies, including those relating to personnel,  
7       procurement of goods and services, board meetings, disposition or acquisition of property,  
8       capital outlays, per diem and mileage, and inspection of records. Nothing in this section relieves  
9       a research park corporation of the obligation to conform to criminal laws or other statutes of  
10      general application.

11      Section 21. A research park corporation formed pursuant to section 16 of this Act shall have  
12      all rights, powers, and privileges granted to nonprofit corporations pursuant to Title 47 which  
13      are necessary and convenient to carry out and to effectuate the provisions of this Act.